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(Public)

Sponsors:

Referred to:

March 16, 2017

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE NAIC MODEL LANGUAGE INTO NORTH CAROLINA'S LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; TO AMEND AND MAKE CLARIFYING CHANGES TO THE SURPLUS LINES ACT; TO AMEND CONSENT TO RATE AND CAPTIVE INSURANCE LAWS; AND TO AMEND AND MAKE TECHNICAL CHANGES TO OTHER INSURANCE LAWS, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

**PART I. AMEND THE NORTH CAROLINA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT WITH NAIC MODEL LANGUAGE**

**SECTION 1.1.(a)** G.S. 58-62-6 reads as rewritten:

**"§ 58-62-6. Purpose.**

(a) The purpose of this Article is to protect, subject to certain limitations, the persons specified in G.S. 58-62-21(a) against failure in the performance of contractual obligations, under ~~life and health insurance policies,~~ life, health, and annuity policies, plans, or contracts specified in G.S. 58-62-21(b), because of the delinquency of the member insurer that issued the ~~policies.~~ policies, plans, or contracts.

(b) To provide this protection, an association of member insurers is created to pay benefits and to continue coverages as limited herein, and members of the Association are subject to assessment to provide funds to carry out the purpose of this Article."

**SECTION 1.1.(b)** G.S. 58-62-16 reads as rewritten:

**"§ 58-62-16. Definitions.**

As used in this Article:

(2a) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the Board has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

(2b) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.



- 1           (3a) "Called assessment" or the term "called" when used in the context of  
2           assessments means that a notice has been issued by the Association to member  
3           insurers requiring that an authorized assessment be paid within the time frame  
4           set forth within the notice. An authorized assessment becomes a called  
5           assessment when notice is mailed by the Association to member insurers.  
6           (4) "Contractual obligation" means any obligation under a ~~policy~~ or  
7           ~~certificate~~ policy, contract, or certificate under a group ~~policy~~, policy, or  
8           contract, or part thereof, for which coverage is provided under G.S. 58-62-21.  
9           (5) ~~"Covered"~~ "Covered contract" or "covered policy" means any ~~policy within the~~  
10           ~~scope of this Article~~ policy, contract, or portion of a policy or contract for  
11           which coverage is provided under G.S. 58-62-21.  
12           (6) "Delinquent insurer" means an impaired insurer or an insolvent insurer; and  
13           "delinquency" means an insurer impairment or insolvency.  
14           (6a) "Extra-contractual claims" shall include claims relating to bad faith in the  
15           payment of claims, punitive or exemplary damages, or attorneys' fees and  
16           costs.  
17           (6b) "Health benefit plan" means any hospital or medical expense policy or  
18           certificate or health maintenance organization subscriber contract or any other  
19           similar health contract. "Health benefit plan" does not include any of the  
20           following:  
21           a. Accident only insurance.  
22           b. Credit insurance.  
23           c. Dental only insurance.  
24           d. Vision only insurance.  
25           e. Medicare Supplement insurance.  
26           f. Benefits for long-term care, home health care, community-based care,  
27           or any combination thereof.  
28           g. Disability insurance.  
29           h. Coverage for on-site medical clinics.  
30           i. Specified disease, hospital confinement indemnity, or limited benefit  
31           health insurance if the types of coverage do not provide coordination  
32           of benefits and are provided under separate policies or certificates.  
33           (7) "Health insurance" includes hospital or medical service corporation contracts,  
34           health maintenance organization subscriber contracts and certificates,  
35           accident and health insurance, accident insurance, and disability insurance.  
36           ...  
37           (11) "Member insurer" means any ~~insurer~~ insurer, health maintenance organization  
38           that is governed by Article 67 of this Chapter, and any hospital or medical  
39           service corporation that is governed by Article 65 of this Chapter and that is  
40           licensed or that holds a license to transact in this State any kind of insurance  
41           or health maintenance organization business for which coverage is provided  
42           under G.S. 58-62-21; and includes any insurer or health maintenance  
43           organization whose license in this State may have been suspended, revoked,  
44           not renewed or voluntarily withdrawn, but does not include ~~an entity governed~~  
45           ~~by Article 67 of this Chapter~~; a fraternal order or fraternal benefit society;  
46           mandatory State pooling plan; mutual assessment company or any entity that  
47           operates on an assessment basis; insurance exchange; or any entity similar to  
48           any of the foregoing.  
49           ...  
50           (12a) "Owner" of a policy or contract and "policyholder," "policy owner," and  
51           "contract owner" mean the person who is identified as the legal owner under

1 the terms of the policy or contract or who is otherwise vested with legal title  
2 to the policy or contract through a valid assignment completed in accordance  
3 with the terms of the policy or contract and properly recorded as the owner on  
4 the books of the member insurer. The terms owner, contract owner,  
5 policyholder, and policy owner do not include persons with a mere beneficial  
6 interest in a policy or contract.

7 (13) "Person" includes an individual, corporation, limited liability company,  
8 partnership, association, or aggregation of individuals, governmental body or  
9 entity, or voluntary organization.

10 ...

11 (14a) "Plan sponsor" means any of the following:

12 a. The employer in the case of a benefit plan established or maintained  
13 by a single employer.

14 b. The employee organization in the case of a benefit plan established or  
15 maintained by an employee organization.

16 c. In a case of a benefit plan established or maintained by two or more  
17 employers or jointly by one or more employers and one or more  
18 employee organizations, the association, committee, joint board of  
19 trustees, or other similar group of representatives of the parties who  
20 establish or maintain the benefit plan.

21 (15) ~~"Policy" includes a master group contract and subscriber contract under~~  
22 ~~Article 65 of this Chapter, a contract of insurance and an annuity contract.~~

23 (16) "Premiums" means amounts or considerations received in any calendar year  
24 on covered policies or contracts less returned premiums, considerations, and  
25 deposits returned thereon, deposits, and less dividends and experience credits  
26 thereon-credits. "Premiums" does not include any amounts or considerations  
27 received for any policies or for the parts of any policies policies, contracts, or  
28 portions of policies or contracts for which coverage is not provided under  
29 G.S. 58-62-21(b); except that assessable premium shall not be reduced on  
30 account of G.S. 58-62-21(c)(3) relating to interest limitations and  
31 G.S. 58-62-21(d)(2) relating to limitations with respect to any one individual,  
32 any one participant, and any one policy or contract holder-owner. Premiums  
33 shall not include premiums in excess of five million dollars (\$5,000,000) on  
34 an unallocated annuity contract not issued under a governmental retirement  
35 benefit plan or its trustee established under Section 401, 403(b), or 457 of the  
36 United States Internal Revenue Code of 1954, or with respect to multiple  
37 nongroup policies of life insurance owned by one owner, whether the policy  
38 or contract owner is an individual, firm, corporation, or other person, and  
39 whether the persons insured are officers, managers, employees, or other  
40 persons, premiums in excess of five million dollars (\$5,000,000) with respect  
41 to these policies or contracts, regardless of the number of policies or contracts  
42 held by the owner.

43 (16a) "Principal place of business" of a plan sponsor or a person other than a natural  
44 person means the single state in which the natural persons who establish  
45 policy for the direction, control, and coordination of the operations of the  
46 entity as a whole primarily exercise that function, determined by the  
47 Association in its reasonable judgment by considering the following factors:

48 a. The state in which the primary executive and administrative  
49 headquarters of the entity is located.

50 b. The state in which the principal office of the chief executive officer of  
51 the entity is located.

- c. The state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings.
- d. The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings.
- e. The state from which the management of the overall operations of the entity is directed.
- f. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.

However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor. The principal place of business of a plan sponsor of a benefit plan described in G.S. 58-62-16(14a)c. shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

(16b) "Receivership court" means the court in the delinquent insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer.

(17) "Resident" means any person who resides in this State when a member insurer is determined to be a delinquent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. "Resident" also means a U.S. citizen residing outside of the United States who owns a covered policy that was purchased from a member insurer while that person resided in this State. Citizens of the United States that are either (i) residents of foreign countries or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the Association created by this Article shall be deemed residents of the state of domicile of the member insurer that issued the policies or contracts.

...  
 (17b) "State" means any state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(17c) "Subaccount" means any of the subaccounts created under G.S. 58-62-26.

(17d) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

...."

**SECTION 1.1.(c)** G.S. 58-62-21 reads as rewritten:

**"§ 58-62-21. Coverage and limitations.**

(a) This Article provides coverage for the policies and contracts specified in subsection (b) of this ~~section~~ section to all of the following:

- (1) To persons other than persons specified in subdivisions (2a), (3) and (4) of this subsection who, regardless of where they ~~reside (except~~ reside, except for nonresident certificate holders or enrollees under group ~~policies), policies or contracts, are the beneficiaries, assignees, or payees-payees, including health care providers rendering services covered under health insurance policies or~~

- 1 certificates, of the persons covered under subdivision (2) of this  
 2 subsection; subsection.
- 3 (2) To persons other than persons specified in subdivisions (2a), (3) and (4) of  
 4 this subsection who are owners of or certificate holders or enrollees under the  
 5 policies, or in the case of unallocated annuity contracts to the persons who are  
 6 the contract holders, policies or contracts, and who are residents of this State,  
 7 or who are not residents of this State, but only under all of the following  
 8 conditions: (i) the insurers member insurer that issued the policies are or  
 9 contracts is domiciled in this State; (ii) the insurers never held a license in the  
 10 states in which the persons reside; (iii) the states in which the persons reside  
 11 have associations similar to the association created by this Article; and (iv)(iii)  
 12 the persons are not eligible for coverage by the associations; an association in  
 13 any other state due to the fact that the insurer or the health maintenance  
 14 organization was not licensed in the state at the time specified in the state's  
 15 guaranty association law.
- 16 (2a) To persons who are the owners of unallocated annuity contracts, provided that  
 17 the contracts are issued to or in connection with a specific benefit plan whose  
 18 plan sponsor has its principal place of business in this State, and persons who  
 19 are owners of unallocated annuity contracts issued to or in connection with  
 20 government lotteries if the owners are residents of this State, unless coverage  
 21 is excluded pursuant to subsection (a1) or (a2) of this section.
- 22 (3) To persons who are payees (or payees, or beneficiaries of payees if the payees  
 23 are deceased) deceased, under structured settlement annuities annuities, except  
 24 as provided in subsections (a1) and (a2) of this section, if the payees are  
 25 residents of this State, regardless of where the contract owners of the  
 26 structured settlement annuities reside; and reside.
- 27 (4) To persons who are payees (or payees, or beneficiaries of payees if the payees  
 28 are deceased) deceased, under structured settlement annuities annuities, except  
 29 as provided in subsections (a1) and (a2) of this section, if the payees are not  
 30 residents of this State, but only if all of the following conditions are met:
- 31 a. The contract owners of the structured settlement annuities are residents  
 32 of this State or, if not residents of this State, (i) the insurers that issued  
 33 the structured settlement annuities are domiciled in this State and (ii)  
 34 the state in which the contract owners reside has an association similar  
 35 to the Association created by this Article; and Article.
- 36 b. Neither the payees (or payees, or beneficiaries of payees if the payees  
 37 are deceased) deceased, nor the contract owners of the structured  
 38 settlement annuities are eligible for coverage by an association of the  
 39 state in which the payees or contract owners reside.
- 40 (a1) This Article shall not provide coverage to any of the following:
- 41 (1) A person who is a payee or beneficiary of a contract owner resident of this  
 42 State, if the payee or beneficiary is afforded any coverage by the association  
 43 of another state.
- 44 (2) A person covered under subdivision (2a) of subsection (a) of this section, if  
 45 any coverage is provided by the association of another state to the person.
- 46 (3) A person who acquires rights to receive payments through a structured  
 47 settlement factoring transaction as defined in 26 U.S.C. § 5891(c)(3)(A),  
 48 regardless of whether the transaction occurred before or after such section  
 49 became effective.
- 50 (a2) This Article is intended to provide coverage to a person who is a resident of this State  
 51 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person

1 who would otherwise receive coverage under this Article is provided coverage under the laws of  
 2 any other state, the person shall not be provided coverage under this Article. In determining the  
 3 application of the provisions of subsection (a) of this section in situations where a person could  
 4 be covered by the association of more than one state, whether as an owner, payee, enrollee,  
 5 beneficiary, or assignee, this Article shall be construed in conjunction with other state laws to  
 6 result in coverage by only one association.

7 (b) This Article provides coverage to the persons specified in subsection (a) of this  
 8 section for policies or contracts of direct, nongroup life, health, annuity, life insurance, health  
 9 insurance, or annuities, and supplemental policies, contracts to any of these, for certificates under  
 10 direct group policies and contracts, and for unallocated annuity contracts issued by member  
 11 insurers, except as limited by this Article. Annuity contracts and certificates under group annuity  
 12 contracts ~~include~~ include, but are not limited to, guaranteed investment contracts, deposit  
 13 administration contracts, unallocated funding agreements, allocated funding agreements,  
 14 structured settlement agreements, lottery contracts, annuities, annuities issued in connection with  
 15 government lotteries, and any immediate or deferred annuity contracts.

16 (c) ~~This~~ Except as provided for in subsection (c1) of this section, this Article does not  
 17 provide coverage for ~~for~~ any of the following:

- 18 (1) Any part of a policy or contract not guaranteed by the member insurer, or  
 19 under which the risk is borne by the ~~policyholder~~ policy or contract owner.
- 20 (2) Any policy or contract of reinsurance, unless assumption certificates have  
 21 been ~~issued~~ issued pursuant to the reinsurance policy or contract.
- 22 (3) Any part of a policy or contract to the extent that the rate of interest on which  
 23 it is based, or the interest rate, crediting rate, or similar factor determined by  
 24 the use of an index or other external reference stated in the policy or contract  
 25 ~~and~~ employed in calculating returns or changes in value:
  - 26 a. Averaged over the period of four years before the date on which the  
 27 ~~Association becomes obligated with respect to the policy~~ member  
 28 insurer becomes an impaired or insolvent insurer under this Article,  
 29 whichever is earlier, exceeds a ~~the~~ rate of interest determined by  
 30 subtracting two percentage points from Moody's Corporate Bond  
 31 Yield Average averaged for that same four-year period or for a lesser  
 32 period if the policy or contract was issued less than four years before  
 33 the Association became obligated ~~member insurer becomes an~~ impaired or insolvent insurer under this Article, whichever is earlier;  
 34 and  
 35
  - 36 b. On and after the date on which the ~~Association becomes obligated with~~  
 37 ~~respect to the policy~~ member insurer becomes an impaired or insolvent  
 38 insurer under this Article, whichever is earlier, exceeds the rate of  
 39 interest determined by subtracting three percentage points from  
 40 Moody's Corporate Bond Yield Average as most recently  
 41 available ~~available.~~
- 42 (4) Any ~~portion~~ portion of a policy or contract issued to a plan or program of an employer,  
 43 association, or similar entity ~~other person~~ to provide life, health, or annuity  
 44 benefits to its employees or member ~~employees, members, or others~~ to the  
 45 extent that the plan or program is self-funded or uninsured, including  
 46 including, but not limited to, benefits payable by an employer, association, or  
 47 similar other entity under ~~under any of the following:~~  
 48 a. A multiple employer welfare arrangement as defined in ~~section 514 of~~  
 49 ~~the Employee Retirement Income Security Act of 1974, as~~  
 50 ~~amended~~ 29 U.S.C. § 1002(40).  
 51 b. A minimum premium group insurance ~~plan~~ plan.

- 1 c. A stop-loss group insurance ~~plan; or plan.~~  
2 d. An administrative services only ~~contract; contract.~~
- 3 (5) Any part of a policy or contract to the extent that it provides dividends or  
4 experience-rating credits, voting rights, or provides that any fees or  
5 allowances be paid to any person, including the ~~policyholder, policy or~~  
6 contract owner, in connection with the service to or administration of the  
7 ~~policy; policy or contract.~~
- 8 (6) Any policy or contract issued in this State by a member insurer at a time when  
9 it was not licensed to issue the policy or contract in this ~~State; State.~~
- 10 (7) Any unallocated annuity contract issued ~~to an employee to,~~ or in connection  
11 with, a benefit plan protected under the federal Pension Benefit Guaranty  
12 Corporation; and Corporation, regardless of whether the federal Pension  
13 Benefit Guaranty Corporation has yet become liable to make any payments  
14 with respect to the benefit plan.
- 15 (8) Any part of any unallocated annuity contract that is not issued to or in  
16 connection with a specific employee, union, or association of natural persons  
17 benefit plan or a government lottery.
- 18 (8a) Any part of a policy or contract to the extent that the assessments required by  
19 G.S. 58-62-41 with respect to the policy or contract are preempted by federal  
20 or state law.
- 21 (8b) An obligation that does not arise under the express written terms of the policy  
22 or contract issued by the member insurer to the enrollee, certificate holder,  
23 contract owner, or policy owner, including, without limitation:
- 24 a. Claims based on marketing materials.  
25 b. Claims based on side letters, riders, or other documents that were  
26 issued by the member insurer without meeting applicable policy or  
27 contract form filing or approval requirements.
- 28 c. Misrepresentations of or regarding policy or contract benefits.  
29 d. Extra-contractual claims.  
30 e. A claim for penalties or consequential or incidental damages.
- 31 (8c) A contractual agreement that establishes the member insurer's obligations to  
32 provide a book value accounting guaranty for defined contribution benefit  
33 plan participants by reference to a portfolio of assets that is owned by the  
34 benefit plan or its trustee, which in each case is not an affiliate of the member  
35 insurer.
- 36 (9) A policy or contract providing any hospital, medical, prescription drug, or  
37 other health care benefits pursuant to Part C or Part D of Subchapter XVIII,  
38 Chapter 7 of Title 42 of the United States ~~Code (commonly Code, commonly~~  
39 known as Medicare Parts C & D), Subchapter XIX, Chapter 7 of Title 42 of  
40 the United States Code, commonly referred to as Medicaid, or any regulations  
41 issued pursuant thereto.
- 42 (10) A portion of a policy or contract to the extent it provides for interest or other  
43 changes in value to be determined by the use of an index or other external  
44 reference stated in the policy or contract, but which have not been credited to  
45 the policy or contract or as to which the policy or contract owner's rights are  
46 subject to forfeiture, as of the date the member insurer becomes an impaired  
47 or insolvent insurer under this ~~Act, Article,~~ whichever is earlier. If a policy's  
48 or contract's interest or changes in value are credited less frequently than  
49 annually, then for purposes of determining the values that have been credited  
50 and are not subject to forfeiture under this subdivision, the interest or change  
51 in value determined by using the procedures defined in the policy or contract

1 will be credited as if the contractual date of crediting interest or changing  
 2 values was the date of impairment or insolvency, whichever is earlier, and will  
 3 not be subject to forfeiture.

4 (11) Structured settlement annuity benefits to which a payee or beneficiary has  
 5 transferred his or her rights in a structured settlement factoring transaction as  
 6 defined in 26 U.S.C. § 5891(c)(3)(A), regardless of whether the transaction  
 7 occurred before or after such section became effective.

8 (c1) The exclusion for coverage referenced in subdivision (3) of subsection (c) of this  
 9 section shall not apply to any portion of a policy or contract, including a rider, that provides  
 10 long-term care or any other health insurance benefits.

11 (d) The benefits for which the Association is liable do not, in any event, exceed the lesser  
 12 of:

13 (1) The contractual obligations for which the member insurer is liable or would  
 14 have been liable if it were not a delinquent ~~insurer; or insurer.~~

15 (2) With respect to any one ~~individual, life,~~ regardless of the number of  
 16 ~~policies, policies or contracts,~~ three hundred thousand dollars (\$300,000) for  
 17 all benefits, including cash ~~values; or values.~~

18 (2a) With respect to health insurance benefits for any one ~~individual, life,~~  
 19 regardless of the number of policies:

20 a. Three hundred thousand dollars (\$300,000) for coverages not defined  
 21 as ~~basic hospital, medical, and surgical insurance or major medical~~  
 22 ~~insurance as defined in this Chapter and regulations adopted pursuant~~  
 23 ~~to this Chapter, including disability insurance and long-term care~~  
 24 ~~insurance; or health benefit plans.~~

25 b. Five hundred thousand dollars (\$500,000) for ~~basic hospital, medical,~~  
 26 ~~and surgical insurance or major medical insurance as defined in this~~  
 27 ~~Chapter and regulations adopted pursuant to this Chapter; health~~  
 28 ~~benefit plans.~~

29 ...  
 30 (6) However, in no event shall the Association be obligated to cover more than  
 31 (i) an aggregate of three hundred thousand dollars (\$300,000) in benefits with  
 32 respect to any one ~~individual—life~~ under subdivisions (2) and (3) and  
 33 sub-subdivision (2a)a. except with respect to benefits for ~~basic hospital,~~  
 34 ~~medical, and surgical and major medical insurance~~ health benefit plans under  
 35 sub-subdivision (2a)b. of this subsection, in which case the aggregate liability  
 36 of the Association shall not exceed five hundred thousand dollars (\$500,000)  
 37 with respect to any one ~~individual, life.~~

38 (7) The limitations set forth in this subsection are limitations on the benefits for  
 39 which the Association is obligated before taking into account either its  
 40 subrogation and assignment rights or the extent to which those benefits could  
 41 be provided out of the assets of the impaired or insolvent insurer attributable  
 42 to covered policies. The costs of the Association's obligations under this  
 43 Article may be met by the use of assets attributable to covered policies or  
 44 reimbursed to the Association pursuant to its subrogation and assignment  
 45 rights.

46 (8) For the purposes of this Article, benefits provided by a long-term care rider to  
 47 a life insurance policy or annuity contract shall be considered the same type  
 48 of benefits as the base life insurance policy or annuity contract to which it  
 49 relates.

1 (e) Repealed by Session Laws 2010-11, s. 2, effective June 23, 2010, and applicable to  
2 claims submitted to the North Carolina Life and Health Insurance Guaranty Association on or  
3 after August 7, 2009."

4 **SECTION 1.1.(d)** G.S. 58-62-26 reads as rewritten:  
5 **"§ 58-62-26. Creation of the Association.**

6 (a) There is created a nonprofit legal entity to be known as the North Carolina Life and  
7 Health Insurance Guaranty Association. All member insurers shall be and remain members of  
8 the Association as a condition of their authority to transact insurance or a health maintenance  
9 organization business in this State. The Association shall perform its functions under the Plan  
10 established and approved under G.S. 58-62-46 and shall exercise its powers through the Board  
11 established under G.S. 58-62-31. For purposes of administration and assessment, the Association  
12 shall maintain two accounts:

13 (1) The life insurance and annuity account, which includes the following  
14 subaccounts:

- 15 a. Life insurance ~~account~~; account.  
16 b. Annuity ~~account~~-account, which shall include annuity contracts owned  
17 by a governmental retirement plan or its trustee established under  
18 Section 401, 403(b), or 457 of the United States Internal Revenue  
19 Code 1954, but shall otherwise exclude unallocated annuities.  
20 c. Unallocated annuity account, which shall exclude contracts owned by  
21 a governmental retirement benefit plan or its trustee established under  
22 Section 401, 403(b), or 457 of the United States Internal Revenue  
23 Code 1954.

24 (2) The health ~~insurance~~-account.

25 (b) The Association is under the immediate supervision of the Commissioner and is  
26 subject to the applicable provisions of this ~~Chapter~~-Article. Meetings or records of the  
27 Association may be opened to the public upon majority vote of the Board."

28 **SECTION 1.1.(e)** G.S. 58-62-31 reads as rewritten:  
29 **"§ 58-62-31. Board of directors.**

30 (a) The Board shall consist of not less than ~~five~~-seven nor more than ~~nine~~-11 member  
31 insurers serving terms as established in the Plan. The members of the Board shall be selected by  
32 member insurers, subject to the Commissioner's approval. Vacancies on the Board shall be filled  
33 for the remaining period of the term by a majority vote of the remaining Board members, subject  
34 to the Commissioner's approval. In addition, two persons who must be public representatives  
35 shall be appointed by the Commissioner to the Board. A public representative may not be an  
36 officer, director, or employee of an insurance company or health maintenance organization or  
37 any person engaged in insurance or health maintenance organization business. To select the initial  
38 Board, and initially organize the Association, the Board's predecessor shall notify all member  
39 insurers of the time and place of the organizational meeting. In determining voting rights at the  
40 organizational meeting, each member insurer is entitled to one vote in person or by proxy. If the  
41 Board is not selected within 60 days after notice of the organizational meeting, the Commissioner  
42 may appoint the initial members.

43 (b) In approving selections or in appointing members to the Board, the Commissioner  
44 shall ~~consider, among other things, whether~~ensure that all member insurers are fairly  
45 ~~represented~~-represented between member insurers that write primarily life insurance and annuity  
46 contracts and member insurers that write primarily health benefit plans.

47 (c) Members of the Board may be reimbursed from the assets of the Association for  
48 expenses they incur as members of the Board, but they shall not otherwise be compensated by  
49 the Association for their services."

50 **SECTION 1.1.(f)** G.S. 58-62-36 reads as rewritten:  
51 **"§ 58-62-36. Powers and duties of the Association.**

1 (a) If a member insurer is an impaired ~~domestic~~ insurer, the Association ~~may, may, in its~~  
 2 discretion, and subject to any conditions imposed by the Association and approved by the  
 3 Commissioner that do not impair the contractual obligations of the impaired insurer ~~and that are,~~  
 4 ~~except in cases of court-ordered conservation or rehabilitation, also approved by the impaired~~  
 5 insurer:

6 (1) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed,  
 7 reissued, or reinsured, any or all of the policies or contracts of the impaired  
 8 ~~insurer; insurer.~~

9 (2) Provide such monies, pledges, loans, notes, guarantees, or other means as are  
 10 proper to carry out subdivision (1) of this subsection and assure payment of  
 11 the contractual obligations of the impaired insurer pending action under  
 12 subdivision (1) of this ~~subsection; or subsection.~~

13 ~~(3) Lend money to the impaired insurer.~~

14 (b), (c) Repealed by Session Laws 2013-136, s. 2, effective July 1, 2013.

15 (d) If a member insurer is an insolvent insurer, the Association shall, in its discretion,  
 16 either:

17 (1) Guarantee, ~~assume~~ assume, reissue, or reinsure, or cause to be guaranteed,  
 18 assumed, or reinsured, the policies or contracts of the insolvent ~~insurer;~~  
 19 ~~or insurer, or~~

20 ~~(2) Assure~~ assure payment of the contractual obligations of the insolvent ~~insurer;~~  
 21 ~~and insurer, and~~

22 ~~(3) Provide~~ provide such monies, pledges, loans, notes, guarantees, or other means  
 23 as are reasonably necessary to discharge ~~those duties; or the Association's~~  
 24 duties.

25 ~~(4) With respect only to life and health insurance policies, provide benefits and~~  
 26 ~~coverages in accordance with subsection (e) of this section.~~

27 ~~(5) Provide benefits and coverages in accordance with the following provisions:~~

28 a. With respect to policies and contracts, assure payment of benefits that  
 29 would have been payable under the policies or contracts of the  
 30 insolvent insurer, for claims incurred:

31 1. With respect to group policies and contracts, not later than the  
 32 earlier of the next renewal date under the policies or contracts  
 33 or 45 days, but in no event less than 30 days after the date on  
 34 which the Association becomes obligated with respect to the  
 35 policies and contracts.

36 2. With respect to nongroup policies, contracts, and annuities, not  
 37 later than the earlier of the next renewal date, if any, under the  
 38 policies or contracts or one year, but in no event less than 30  
 39 days from the date on which the Association becomes  
 40 obligated with respect to the policies or contracts.

41 b. Make diligent efforts to provide all known insureds, enrollees, or, in  
 42 the case of nongroup policies and contracts, annuitants, or group  
 43 policy or contract owners with respect to group policies and contracts  
 44 30 days' notice of the termination of the benefits provided.

45 c. With respect to nongroup policies and contracts covered by the  
 46 Association, make available to each known insured, enrollee, or  
 47 annuitant, or owner if other than the insured, enrollee, or annuitant,  
 48 and with respect to an individual formerly an insured, enrollee, or  
 49 annuitant under a group policy or contract who is not eligible for  
 50 replacement group coverage, make available substitute coverage on an  
 51 individual basis in accordance with the provisions of sub-subdivision

1 d. of this subdivision, if the insureds, enrollees, or annuitants had a  
2 right under law or the terminated policy, contract, or annuity to convert  
3 coverage to individual coverage or to continue an individual policy,  
4 contract, or annuity in force until a specified age or for a specified  
5 time, during which the insurer or health maintenance organization had  
6 no right unilaterally to make changes in any provision of the policy,  
7 contract, or annuity or had a right only to make changes in premium  
8 by class.

9 d. In providing the substitute coverage required under sub-subdivision c.  
10 of this subdivision, the Association may offer either to reissue the  
11 terminated coverage or to issue an alternative policy or contract at  
12 actuarially justified rates, subject to the prior approval of the  
13 Commissioner. Alternative or reissued policies or contracts shall be  
14 offered without requiring evidence of insurability and shall not  
15 provide for any waiting period or exclusion that would not have  
16 applied under the terminated policy or contract. The Association may  
17 reinsure any alternative or reissued policy or contract.

18 e. Alternative policies or contracts adopted by the Association are  
19 subject to the Commissioner's approval. The Association may adopt  
20 alternative policies or contracts of various types for future issuance  
21 without regard to any particular delinquency. Alternative policies or  
22 contracts shall contain at least the minimum statutory provisions  
23 required in this State and provide benefits that are not unreasonable in  
24 relation to the premium charged. The Association shall set the  
25 premium in accordance with a table of rates, which it shall adopt. The  
26 premium shall reflect the amount of insurance or coverage to be  
27 provided and the age and class of risk of each insured or enrollee but  
28 shall not reflect any changes in the health of the insured or enrollee  
29 after the original policy or contract was last underwritten. Any  
30 alternative policy or contract issued by the Association shall provide  
31 coverage of a type similar to that of the policy or contract issued by  
32 the delinquent insurer, as determined by the Association.

33 f. If the Association elects to reissue terminated coverage at a premium  
34 rate different from that charged under the terminated policy or  
35 contract, the premium shall be actuarially justified and set by the  
36 Association in accordance with the amount of insurance or coverage  
37 provided and the age and class of risk, subject to the prior approval of  
38 the Commissioner.

39 g. The Association's obligations with respect to coverage under any  
40 policy or contract of the delinquent insurer or under any reissued or  
41 alternative policy or contract shall cease on the date the coverage or  
42 policy or contract is replaced by another similar policy or contract by  
43 the policy or contract owner, the insured, the enrollee, or the  
44 Association.

45 h. When proceeding under subdivision (5) of this subsection with respect  
46 to any policy or contract carrying guaranteed minimum interest rates,  
47 the Association shall assure the payment or crediting of a rate of  
48 interest consistent with G.S. 58-62-21(c)(3).

49 (d1) In carrying out its duties in connection with guaranteeing, assuming, reissuing, or  
50 reinsuring policies or contracts under subsections (a) and (d) of this section, the Association ~~may,~~  
51 ~~subject to approval of the receivership court,~~ may issue substitute coverage for a policy or contract

1 that provides an interest rate, crediting rate, or similar factor determined by use of an index or  
2 other external reference stated in the policy or contract employed in calculating returns or  
3 changes in value by issuing an alternative policy or contract in accordance with all of the  
4 following provisions:

- 5 (1) In lieu of the index or other external reference provided for in the original  
6 policy or contract, the alternative policy or contract provides for (i) a fixed  
7 interest rate, (ii) payment of dividends with minimum guarantees, or (iii) a  
8 different method for calculating interest or changes in ~~value;~~value.
- 9 (2) There is no requirement for evidence of insurability, waiting period, or other  
10 exclusion that would not have applied under the replaced policy or ~~contract;~~  
11 and contract.
- 12 (3) The alternative policy or contract is substantially similar to the replaced policy  
13 or contract in all other material ~~terms.~~terms.

14 (e) ~~When proceeding under subdivision (b)(2) or (d)(4) of this section, the Association~~  
15 ~~shall, with respect to only life and health insurance policies:~~

- 16 (1) ~~Assure payment of benefits for premiums identical to the premiums and~~  
17 ~~benefits (except for terms of conversion and renewability) that would have~~  
18 ~~been payable under the policies of the insolvent insurer, for claims incurred:~~
  - 19 a. ~~With respect to group policies, not later than the earlier of the next~~  
20 ~~renewal date under the policies or 45 days, but in no event less than 30~~  
21 ~~days after the date on which the Association becomes obligated with~~  
22 ~~respect to the policies;~~
  - 23 b. ~~With respect to individual policies, not later than the earlier of the next~~  
24 ~~renewal date (if any) under the policies or one year, but in no event~~  
25 ~~less than 30 days from the date on which the Association becomes~~  
26 ~~obligated with respect to the policies;~~
- 27 (2) ~~Make diligent efforts to provide all known insureds or group policyholders~~  
28 ~~with respect to group policies 30 days' notice of the termination of the benefits~~  
29 ~~provided; and~~
- 30 (3) ~~With respect to individual policies, make available to each known insured, or~~  
31 ~~owner if other than the insured, and with respect to an individual formerly~~  
32 ~~insured under a group policy who is not eligible for replacement group~~  
33 ~~coverage, make available substitute coverage on an individual basis in~~  
34 ~~accordance with the provisions of subsection (f) of this section, if the insured~~  
35 ~~had a right under law or the terminated policy to convert coverage to~~  
36 ~~individual coverage or to continue an individual policy in force until a~~  
37 ~~specified age or for a specified time, during which the insurer had no right~~  
38 ~~unilaterally to make changes in any provision of the policy or had a right only~~  
39 ~~to make changes in premium by class.~~

40 (f) ~~In providing the substitute coverage required under subdivision (e)(3) of this section,~~  
41 ~~the Association may offer either to reissue the terminated coverage or to issue an alternative~~  
42 ~~policy. An alternative or reissued policy shall be offered without requiring evidence of~~  
43 ~~insurability, and shall not provide for any waiting period or exclusion that would not have applied~~  
44 ~~under the terminated policy. The Association may reinsure any alternative or reissued policy.~~

45 (g) ~~Alternative life or health insurance policies adopted by the Association are subject to~~  
46 ~~the Commissioner's approval. The Association may adopt alternative policies of various types~~  
47 ~~for future issuance without regard to any particular delinquency. Alternative policies shall~~  
48 ~~contain at least the minimum statutory provisions required in this State and provide benefits that~~  
49 ~~are not unreasonable in relation to the premium charged. The Association shall set the premium~~  
50 ~~in accordance with a table of rates, which it shall adopt. The premium shall reflect the amount of~~  
51 ~~insurance to be provided and the age and class of risk of each insured, but it shall not reflect any~~

1 changes in the health of the insured after the original policy was last underwritten. Any alternative  
2 policy issued by the Association shall provide coverage of a type similar to that of the policy  
3 issued by the delinquent insurer, as determined by the Association.

4 (h) If the Association elects to reissue terminated coverage at a premium rate different  
5 from that charged under the terminated life or health insurance policy, the premium shall be set  
6 by the Association in accordance with the amount of insurance provided and the age and class of  
7 risk, subject to the approval of the Commissioner or by a court of competent jurisdiction.

8 (i) The Association's obligations with respect to coverage under any life or health  
9 insurance policy of the delinquent insurer or under any reissued or alternative policy cease on the  
10 date the coverage or policy is replaced by another similar policy by the policyholder, the insured,  
11 or the Association.

12 (j) When proceeding under subdivision (b)(2) of this section or under subsection (e) of  
13 this section with respect to any policy carrying guaranteed minimum interest rates, the  
14 Association shall assure the payment or crediting of a rate of interest consistent with G.S.  
15 58-62-21(e)(3).

16 (k) Nonpayment of premiums within 31 days after the date required under the terms of  
17 any guaranteed, assumed, alternative, or reissued ~~policy~~ policy, contract, or substitute coverage  
18 terminates the Association's obligations under the ~~policy~~ policy, contract, or coverage under this  
19 Article with respect to the ~~policy~~ policy, contract, or coverage, except with respect to any claims  
20 incurred or any net cash surrender value that may be due under this Article.

21 (l) Premiums due for coverage after an entry of an order of liquidation of an insolvent  
22 insurer belong to and are payable at the direction of the ~~Association; and the Association. If the~~  
23 liquidator of an insolvent insurer requests, the Association shall provide a report to the liquidator  
24 regarding such premium collected by the Association. The Association is liable for unearned  
25 premiums owed to policyowners due to policy or contract owners arising after the entry of the  
26 order.

27 (m) The protection provided by this Article does not apply where any similar guaranty  
28 protection is provided to residents of this State by the laws of the domiciliary state or jurisdiction  
29 of a delinquent foreign or alien member insurer.

30 (n) In carrying out its duties under ~~subsections (b) through~~ subsection (d) of this section,  
31 the Association may, subject to approval by ~~the court;~~ a court in this State:

32 (1) Impose permanent policy or contract liens in connection with any guarantee,  
33 assumption, or reinsurance agreement, if the Association finds that the  
34 amounts that can be assessed under this Article are less than the amounts  
35 needed to assure full and prompt performance of the Association's duties  
36 under this Article, or that the economic or financial conditions as they affect  
37 member insurers are sufficiently adverse to render the imposition of the  
38 permanent policy or contract liens to be in the public ~~interest;~~ interest.

39 (2) Impose temporary moratoria or liens on payments of cash values and policy  
40 loans, or any other right to withdraw funds held in conjunction with  
41 ~~policies,~~ policies or contracts, in addition to any contractual provisions for  
42 deferral of cash or policy loan value. In addition, in the event of a temporary  
43 moratorium or moratorium charge imposed by the court on payment of cash  
44 values or policy loans, or on any other right to withdraw funds held in  
45 conjunction with policies or contracts, out of the assets of the delinquent  
46 insurer, the Association may defer the payment of cash values, policy loans,  
47 or other rights by the Association for the period of the moratorium or  
48 moratorium charge imposed by the court, except for claims covered by the  
49 Association to be paid in accordance with a hardship procedure established by  
50 the liquidator or rehabilitator and approved by the receivership court.

1 (o) If the Association fails to act within a reasonable period of time as provided in  
2 ~~subdivision (b)(2) of this section and subsections~~subsection (d) and (e) of this section, the  
3 Commissioner has the powers and duties of the Association under this Article with respect to  
4 delinquent insurers.

5 (p) The Association may render assistance and advice to the Commissioner, upon the  
6 Commissioner's request concerning rehabilitation, payment of claims, continuance of coverage,  
7 or the performance of other contractual obligations of any delinquent insurer.

8 (q) The Association has standing to appear or intervene before any court or agency in this  
9 State with jurisdiction over a delinquent insurer for which the Association is or may become  
10 obligated under this ~~Article~~Article or with jurisdiction over any person or property against which  
11 the Association may have rights through subrogation or otherwise. This standing extends to all  
12 matters germane to the powers and duties of the Association, including, but not limited to,  
13 proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts of the  
14 delinquent insurer and the determination of the policies or contracts and contractual obligations.  
15 The Association also has the right to appear or intervene before a court or agency in another state  
16 with jurisdiction over a delinquent insurer for which the Association is or may become obligated  
17 or with jurisdiction over ~~a third party~~any person or property against whom the Association may  
18 have rights through subrogation ~~of the insurer's policyholders~~or otherwise.

19 (r) Any person receiving benefits under this Article is considered to have ~~been~~-assigned  
20 the rights under, and any causes of action against any person for losses arising under, resulting,  
21 from or otherwise relating to, the covered policy or contract to the Association to the extent of  
22 the benefits received because of this Article, whether the benefits are payments of or on account  
23 of contractual obligations, continuation of coverage, or provision of substitute or alternative  
24 policies, contracts, or coverages. The Association may require an assignment to it of such rights  
25 and cause of action by any enrollee, payee, policyowner, policy or contract owner, beneficiary,  
26 insured or annuitant as a condition precedent to the receipt of any right or benefits conferred by  
27 this Article upon the person. The subrogation rights of the Association under this subsection have  
28 the same priority against the delinquent insurer's assets as that possessed by the person entitled  
29 to receive benefits under this Article. In addition to other provisions of this subsection, the  
30 Association has all common-law rights of subrogation and any other equitable or legal remedy  
31 that would have been available to the delinquent insurer or ~~holder~~owner, beneficiary, enrollee,  
32 or payee of a policy or contract with respect to the ~~policy~~policy or contracts, including in the  
33 case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the  
34 annuity, to the extent of benefits received pursuant to this Article, against a person originally or  
35 by succession responsible for the losses arising from the personal injury relating to the annuity  
36 or payment therefore, excepting any such person responsible solely by reason of serving as an  
37 assignee in respect of a qualified assignment under Internal Revenue Code Section 130. If the  
38 provisions of this subsection are invalid or ineffective with respect to any person or claim for any  
39 reason, the amount payable by the Association with respect to the related covered obligations  
40 shall be reduced by the amount realized by any other person with respect to the person or claim  
41 that is attributable to the policies or contracts or portion thereof covered by the Association. If  
42 the Association has provided benefits with respect to a covered obligation and a person recovers  
43 amounts as to which the Association has rights as described in this subsection, the person shall  
44 pay to the Association the portion of the recovery attributable to the policies or contracts or  
45 portion thereof covered by the Association.

46 (s) ~~The~~In addition to the rights and powers elsewhere in this Article, the Association  
47 may~~may~~ do all of the following:

- 48 (1) Enter into contracts that are necessary or proper to carry out the provisions  
49 and purposes of this ~~Article~~Article.

- 1 (2) Sue or be sued, including taking any legal actions necessary or proper to  
2 recover any unpaid assessments under G.S. 58-62-41 and to settle claims or  
3 potential claims against ~~it~~; it.
- 4 (3) Borrow money to effect the purposes of this Article; any notes or other  
5 evidence of indebtedness of the Association not in default shall be legal  
6 investments for domestic member insurers and may be carried as admitted  
7 ~~assets~~; assets.
- 8 (4) Employ or retain persons that are necessary to handle the financial  
9 transactions of the Association, and to perform other functions that become  
10 necessary or proper under this ~~Article~~; Article.
- 11 (5) Take legal action that may be necessary to avoid or recover payment of  
12 improper ~~claims~~; claims.
- 13 (6) Exercise, for the purposes of this Article and to the extent approved by the  
14 Commissioner, the powers of a domestic life ~~or insurer~~, health insurer, or  
15 health maintenance organization, but in no case may the Association issue  
16 ~~insurance~~ policies or ~~annuity~~ contracts other than those issued to perform its  
17 obligations under this Article.
- 18 (7) Organize itself as a corporation or in other legal form permitted by the laws  
19 of this State.
- 20 (8) Request information from a person seeking coverage from the Association in  
21 order to aid the Association in determining its obligations under this Article  
22 with respect to the person, and the person shall promptly comply with the  
23 request.
- 24 (9) Unless prohibited by law, in accordance with the terms and conditions of the  
25 policy or contract, file for actuarially justified rate or premium increases for  
26 any policy or contract for which it provides coverage under this Article.
- 27 (10) Take other necessary or appropriate action to discharge its duties and  
28 obligations under this Article or to exercise its powers under this Article.
- 29 (t) The Association may join an organization of one or more other state associations of  
30 similar purposes, in order to further the purposes of this Article and administer the powers and  
31 duties of the Association.
- 32 (u) Reinsurance Contracts. –
- 33 (1) At any time within 180 days of the date of the order of liquidation, the  
34 Association may elect to succeed to the rights and obligations of the ceding  
35 member insurer that relate to policies, contracts, or annuities covered, in  
36 whole or in part, by the Association in each case under any one or more  
37 reinsurance contracts entered into by the insolvent insurer and its reinsurers  
38 and selected by the Association. Any such assumption shall be effective as of  
39 the date of the order of liquidation. The election shall be effected by the  
40 Association or the National Organization of Life and Health Insurance  
41 Guaranty Associations (NOLHGA) on its behalf sending written notice, return  
42 receipt requested, to the affected reinsurers.
- 43 (2) To facilitate the earliest practicable decision about whether to assume any of  
44 the contracts of reinsurance, and in order to protect the financial position of  
45 the estate, the receiver and each reinsurer of the ceding member insurer shall  
46 make available upon request to the Association or to NOLHGA on its behalf  
47 as soon as possible after commencement of formal delinquency proceedings  
48 (i) copies of in-force contracts of reinsurance and all related files and records  
49 relevant to the determination of whether such contracts should be assumed  
50 and (ii) notices of any defaults under the reinsurance contracts or any known

1 event or condition which with the passage of time could become a default  
2 under the reinsurance contracts.

3 (3) The following shall apply to reinsurance contracts so assumed by the  
4 Association:

5 a. The Association shall be responsible for all unpaid premiums due  
6 under the reinsurance contracts for periods both before and after the  
7 date of the order of liquidation, and shall be responsible for the  
8 performance of all other obligations to be performed after the date of  
9 the order of liquidation in each case which relate to policies, contracts,  
10 or annuities covered, in whole or in part, by the Association. The  
11 Association may charge policies, contracts, or annuities covered in  
12 part by the Association, through reasonable allocation methods, the  
13 costs for reinsurance in excess of the obligations of the Association  
14 and shall provide notice and an accounting of these charges to the  
15 liquidator.

16 b. The Association shall be entitled to any amounts payable by the  
17 reinsurer under the reinsurance contracts with respect to losses or  
18 events that occur in periods after the date of the order of liquidation  
19 and that relate to policies, contracts, or annuities covered, in whole or  
20 in part, by the Association, provided that, upon receipt of any such  
21 amounts, the Association shall be obliged to pay to the beneficiary  
22 under the policy, contracts, or annuity on account of which the  
23 amounts were paid a portion of the amount equal to the lesser of:

24 1. The amount received by the Association.

25 2. The excess of the amount received by the Association over the  
26 amount equal to the benefits paid by the Association on  
27 account of the policy, contracts, or annuity less the retention of  
28 the insurer applicable to the loss or event.

29 c. Within 30 days following the Association's election (the "election  
30 date"), the Association and each reinsurer under contracts assumed by  
31 the Association shall calculate the net balance due to or from the  
32 Association under each reinsurance contract as of the election date  
33 with respect to policies, contracts, or annuities covered, in whole or in  
34 part, by the Association, which calculation shall give full credit to all  
35 items paid by either the member insurer or its receiver or the reinsurer  
36 prior to the election date. The reinsurer shall pay the receiver any  
37 amounts due for losses or events prior to the date of the order of  
38 liquidation, subject to any set-off for premiums unpaid for periods  
39 prior to the date, and the Association or reinsurer shall pay any  
40 remaining balance due the other, in each case within five days of the  
41 completion of the aforementioned calculation. Any disputes over the  
42 amounts due to either the Association or the reinsurer shall be resolved  
43 by arbitration pursuant to the terms of the affected reinsurance  
44 contracts or, if the contract contains no arbitration clause, as otherwise  
45 provided by law. If the receiver has received any amounts due the  
46 Association pursuant to subdivision (2) of this subsection, the receiver  
47 shall remit the same to the Association as promptly as practicable.

48 d. If the Association or receiver, on the Association's behalf, within 60  
49 days of the election date, pays the unpaid premiums due for periods  
50 both before and after the election date that relate to policies, contracts,  
51 or annuities covered, in whole or in part, by the Association, the

- 1                    reinsurer shall not be entitled to terminate the reinsurance contracts for  
2                    failure to pay premium insofar as the reinsurance contracts relate to  
3                    policies, contracts, or annuities covered, in whole or in part, by the  
4                    Association, and shall not be entitled to set off any unpaid amounts  
5                    due under other contracts, or unpaid amounts due from parties other  
6                    than the Association, against amounts due the Association.
- 7                    (4) During the period from the date of the order of liquidation until the election  
8                    date or, if the election date does not occur, until 180 days after the date of the  
9                    order of liquidation, neither the Association nor the reinsurer shall have any  
10                   rights or obligations under reinsurance contracts that the Association has the  
11                   right to assume under this subsection, whether for periods prior to or after the  
12                   date of the order of liquidation; and the reinsurer, the receiver, and the  
13                   Association shall, to the extent practicable, provide each other data and  
14                   records reasonably requested; provided that once the Association has elected  
15                   to assume a reinsurance contract, the parties' rights and obligations shall be  
16                   governed by this subsection.
- 17                   (5) If the Association does not elect to assume a reinsurance contract by the  
18                   election date pursuant to this subsection, the Association shall have no rights  
19                   or obligations, in each case for periods both before and after the date of the  
20                   order of liquidation, with respect to the reinsurance contract.
- 21                   (6) When policies, contracts, or annuities, or covered obligations with respect  
22                   thereto, are transferred to an assuming insurer, reinsurance on the policies,  
23                   contracts, or annuities may also be transferred by the Association, in the case  
24                   of contracts assumed under this subsection, subject to the following:
- 25                   a. Unless the reinsurer and the assuming insurer agree otherwise, the  
26                   reinsurance contract transferred shall not cover any new policies of  
27                   insurance, contracts, or annuities in addition to those transferred.
- 28                   b. The obligations described in this subsection shall no longer apply with  
29                   respect to matters arising after the effective date of the transfer.
- 30                   c. Notice shall be given in writing, return receipt requested, by the  
31                   transferring party to the affected reinsurer not less than 30 days prior  
32                   to the effective date of the transfer.
- 33                   (7) The provisions of this subsection shall supersede the provisions of any state  
34                   law or of any affected reinsurance contract that provides for or requires any  
35                   payment of reinsurance proceeds, on account of losses or events that occur in  
36                   periods after the date of the order of liquidation, to the receiver of the insolvent  
37                   insurer or any other person. The receiver shall remain entitled to any amounts  
38                   payable by the reinsurer under the reinsurance contracts with respect to losses  
39                   or events that occur in periods prior to the date of the order of liquidation,  
40                   subject to applicable setoff provisions.
- 41                   (8) Except as otherwise provided in this subsection, nothing in this subsection  
42                   shall alter or modify the terms and conditions of any reinsurance contract.  
43                   Nothing in this subsection shall abrogate or limit any rights of any reinsurer  
44                   to claim that it is entitled to rescind a reinsurance contract. Nothing in this  
45                   subsection shall give a policyholder, contract owner, enrollee, certificate  
46                   holder, or beneficiary an independent cause of action against a reinsurer that  
47                   is not otherwise set forth in the reinsurance contract. Nothing in this  
48                   subsection shall limit or affect the Association's rights as a creditor of the  
49                   estate against the assets of the estate. Nothing in this subsection shall apply to  
50                   reinsurance agreements covering property or casualty risks.

1       (v) The Board shall have discretion and may exercise reasonable business judgment to  
2 determine the means by which the Association is to provide the benefits of this Article in an  
3 economical and efficient manner.

4       (w) Where the Association has arranged or offered to provide the benefits of this Article  
5 to a covered person under a plan or arrangement that fulfills the Association's obligations under  
6 this Article, the person shall not be entitled to benefits from the Association in addition to or  
7 other than those provided under the plan or arrangement.

8       (x) Venue in a suit against the Association arising under this Article shall be in the  
9 Superior Court of Wake County. The Association shall not be required to give an appeal bond in  
10 an appeal that relates to a cause of action arising under this Article."

11       **SECTION 1.1.(g)** G.S. 58-62-41 reads as rewritten:

12       "**§ 58-62-41. Assessments.**

13       (a) ~~To provide~~ For the purpose of providing the funds necessary to carry out the powers  
14 and duties of the Association, the Board shall assess the member insurers, separately for each  
15 account, at such time and for such amounts as the Board finds necessary. Assessments are due  
16 not less than 30 days after prior written notice to the member insurers and shall accrue interest at  
17 the rate of one percent (1%) per month, or any part thereof, after the due date.

18       (b) There shall be two classes of assessments, as follows:

19       (1) Class A assessments shall be ~~made~~ authorized and called for the purpose of  
20 meeting administrative and legal costs and other ~~expenses and examinations~~  
21 ~~conducted under the authority of G.S. 58-62-56(e).~~ expenses. Class A  
22 assessments may be ~~made~~ authorized and called whether or not ~~they are~~ related  
23 to a particular delinquent insurer.

24       (2) Class B assessments shall be ~~made~~ authorized and called to the extent  
25 necessary to carry out the powers and duties of the Association under  
26 G.S. 58-62-36 with regard to a delinquent insurer.

27       (c) The amount of any Class A assessment shall be determined by the Board and may or  
28 may not be prorated. If prorated, the Board may provide that it be credited against future Class  
29 B assessments. ~~If not prorated, the assessment shall not exceed five hundred dollars (\$500.00)~~  
30 ~~per member insurer in any one calendar year.~~ The amount of any Class B assessment  
31 assessment, except for assessments relating to long-term care insurance, shall be allocated for assessment  
32 purposes among between the accounts and among the subaccounts of the life insurance and  
33 annuity account, pursuant to an allocation formula, which may be based on the premiums or  
34 reserves of the delinquent insurer or any other standard considered by the Board in its sole  
35 discretion to be fair and reasonable under the circumstances.

36       (c1) The amount of the Class B assessment for long-term care insurance written by the  
37 impaired or insolvent insurer shall be allocated according to a methodology included in the Plan  
38 and approved by the Commissioner. The methodology shall provide for fifty percent (50%) of  
39 the assessment to be allocated to accident and health member insurers and fifty percent (50%) to  
40 be allocated to life and annuity member insurers.

41       (d) Class B assessments against member insurers for each account and subaccount shall  
42 be in the proportion that the premiums received on business in this State by each assessed member  
43 insurer or policies and contracts covered by each account and subaccount for the three most  
44 recent calendar years for which information is available preceding the year in which the member  
45 insurer became ~~delinquent, as the case may be, delinquent~~ bears to the premiums received on  
46 business in this State for those calendar years by all assessed member insurers.

47       (e) Assessments for funds to meet the requirements of the Association with respect to a  
48 delinquent insurer shall not be ~~made~~ authorized or called until necessary to implement the  
49 purposes of this Article. Classification of assessments under subsection (b) of this section and  
50 computation of assessments under this subsection shall be made with a reasonable degree of  
51 accuracy, recognizing that exact determinations may not always be possible. The Association

1 shall notify each member insurer of its anticipated pro rata share of an authorized assessment not  
2 yet called within 180 days after the assessment is authorized.

3 (f) The Association may abate or defer, in whole or in part, the assessment of a member  
4 insurer if, in the Board's opinion, payment of the assessment would endanger the member  
5 insurer's ability to fulfill its contractual obligations. If an assessment against a member insurer is  
6 abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred  
7 may be assessed against the other member insurers in a manner consistent with the basis for  
8 assessments set forth in this section. Once the conditions that caused a deferral have been  
9 removed or rectified, the member insurer shall pay all assessments that were deferred pursuant  
10 to a repayment plan approved by the Association.

11 (g) The total of all assessments authorized by the Association upon a member insurer for  
12 ~~the life and annuity account and for each subaccount thereunder shall not in any one calendar~~  
13 ~~year exceed two percent (2%) of the life insurance and annuity account~~ and for the health account  
14 shall not in any one calendar year exceed two percent (2%) of the member insurer's average  
15 annual premiums received in this State on the policies and contracts covered by the subaccount  
16 or account during the three calendar years preceding the year in which anthe member insurer  
17 became a delinquent insurer. If two or more assessments are authorized in one calendar year with  
18 respect to member insurers that become impaired or insolvent in different calendar years, the  
19 average annual premiums for purposes of the aggregate assessment percentage limitation shall  
20 be equal and limited to the higher of the three-year average annual premiums for the applicable  
21 subaccount or account as calculated pursuant to this subsection. If the maximum assessment,  
22 together with the other assets of the Association in any account, does not provide in any one year  
23 in either account an amount sufficient to carry out the Association's responsibilities, the necessary  
24 additional funds shall be assessed as soon thereafter as permitted by this Article.

25 (h) The Board may provide in the Plan a method of allocating funds among claims,  
26 whether relating to one or more delinquent insurers, when the maximum assessment will be  
27 insufficient to cover anticipated claims.

28 (i) ~~If a one percent (1%)the maximum~~ assessment for ~~any~~ subaccount of the life and  
29 annuity account in any one year does not provide an amount sufficient to carry out the  
30 Association's responsibilities, then under subsection (d) of this section, the Board shall ~~assess~~  
31 ~~all~~ access the other subaccounts of the life and annuity account for the necessary additional  
32 amount, subject to the maximum stated in subsection (g) of this section.

33 (j) The Board may, by an equitable method as established in the Plan, refund to member  
34 insurers, in proportion to the contribution of each member insurer to that account, the amount by  
35 which the assets of the account exceed the amount the Board finds is necessary to carry out during  
36 the coming year the obligations of the Association with regard to that account, including assets  
37 accruing from assignment, subrogation, net realized gains, and income from investments. A  
38 reasonable amount may be retained in any account to provide funds for the continuing expenses  
39 of the Association and for future ~~losses~~ losses claims.

40 (k) It is proper for any member insurer, in determining its premium rates and  
41 ~~policy owner~~ policy or contract owner dividends as to any kind of insurance or health maintenance  
42 organization business within the scope of this Article, to consider the amount reasonably  
43 necessary to meet its assessment obligations under this Article.

44 (l) The Association shall issue to each member insurer paying an assessment under this  
45 Article, other than a Class A assessment, a certificate of contribution, in a form prescribed by the  
46 Commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of  
47 equal dignity and priority without reference to amounts or dates of issue. A certificate of  
48 contribution may be shown by the member insurer in its financial statement as an asset in such  
49 form and for such amount, if any, and period of time as the Commissioner may approve.

50 (m) A member insurer that wishes to protest all or part of an assessment shall pay when  
51 due the full amount of the assessment as set forth in the notice provided by the Association. The

1 payment shall be available to meet Association obligations during the pendency of the protest or  
 2 any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment  
 3 is made under protest and setting forth a brief statement of the grounds for the protest. Within 60  
 4 days following the payment of an assessment under protest by a member insurer, the Association  
 5 shall notify the member insurer in writing of its determination with respect to the protest unless  
 6 the Association notifies the member insurer that additional time is required to resolve the issues  
 7 raised by the protest. Within 30 days after a final decision has been made, the Association shall  
 8 notify the protesting member insurer in writing of that final decision. Within 60 days of receipt  
 9 of notice of the final decision, the protesting member insurer may appeal that final action to the  
 10 Commissioner. In the alternative to rendering a final decision with respect to a protest based on  
 11 a question regarding the assessment base, the Association may refer protests to the Commissioner  
 12 for a final decision, with or without a recommendation from the Association. If the protest or  
 13 appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the  
 14 member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate  
 15 actually earned by the Association.

16 (n) The Association may request information of member insurers in order to aid in the  
 17 exercise of its power under this section and member insurers shall promptly comply with a  
 18 request."

19 **SECTION 1.1.(h)** G.S. 58-62-46(d) reads as rewritten:

20 "(d) The Plan shall, in addition to other requirements specified in this Article,  
 21 ~~establish:~~establish all of the following:

- 22 (1) Procedures for handling the assets of the ~~Association;~~Association.
- 23 (2) The amount and method of reimbursing members of the Board under ~~G.S.~~  
 24 ~~58-62-31;~~G.S. 58-62-31.
- 25 (3) Regular places and times for meetings, including telephone conference calls,  
 26 of the ~~Board;~~Board.
- 27 (4) Procedures for records to be kept of all financial transactions of the  
 28 Association, its agents, and the ~~Board;~~Board.
- 29 ~~The procedures~~Procedures whereby selections for the Board will be made and  
 30 submitted to the ~~Commissioner;~~Commissioner.
- 31 (6) Any additional procedures for assessments under ~~G.S.~~  
 32 ~~58-62-41;~~G.S. 58-62-41.
- 33 (7) Additional provisions necessary or proper for the execution of the powers and  
 34 duties of the Association.
- 35 (8) Procedures whereby a director may be removed for cause, including in the  
 36 case where a member insurer director becomes a delinquent insurer.
- 37 (9) Policies and procedures for the Board to address conflicts of interests."

38 **SECTION 1.1.(i)** G.S. 58-62-51 reads as rewritten:

39 **"§ 58-62-51. Duties and powers of the Commissioner.**

40 (a) In addition to other duties and powers specified in this Article, the Commissioner  
 41 ~~shall:~~shall do all of the following:

- 42 (1) Upon request of the Board, provide the Association with a statement of the  
 43 premiums in this State and any other appropriate states for each member  
 44 ~~insurer;~~insurer.
- 45 (2) When an impairment is declared and the amount of the impairment is  
 46 determined, serve a demand upon the impaired insurer to make good the  
 47 impairment within a reasonable time; notice to the impaired insurer shall  
 48 constitute notice to its shareholders, if any; the failure of the impaired insurer  
 49 to comply promptly with the demand does not excuse the Association from  
 50 the performance of its powers and duties under this ~~Article;~~ and Article.

(3) ~~In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator as provided in Article 30 of this Chapter.~~

(b) The Commissioner may suspend or revoke, after notice and hearing, the license to transact ~~insurance~~ business in this State of any member insurer that fails to pay an assessment when due or fails to comply with the Plan. As an alternative the Commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100.00) per month.

(c) Any action of the Board or the Association may be appealed to the Commissioner by any member insurer if the appeal is taken within 60 days of its receipt of notice of the final action being appealed. If a member ~~company~~ insurer is appealing an assessment, the amount assessed shall be paid to the Association and available to meet Association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member ~~company~~ insurer. No later than 20 days before each hearing, the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of the appellant's case and any evidence the appellant intends to offer at the hearing. No later than five days before the hearing, the appellee shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence the appellee intends to offer at the hearing. Each hearing shall be recorded and transcribed. The cost of the recording and transcribing shall be borne equally by the appellant and appellee; however, upon any final adjudication the prevailing party shall be reimbursed for that party's share of the costs by the other party. Each party shall, on a date determined by the Commissioner or the Commissioner's designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the Commissioner's designated hearing officer and serve on the other party, a proposed order. The Commissioner or the Commissioner's designated hearing officer shall then issue an order. Any final action or order of the Commissioner or the Commissioner's designated hearing officer is subject to judicial review under G.S. 58-2-75.

(d) The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may notify all interested persons of the effect of this Article."

**SECTION 1.1.(j)** G.S. 58-62-56 reads as rewritten:

**"§ 58-62-56. Prevention of delinquencies.**

(a) To aid in the detection and prevention of member insurer delinquencies, it is the Commissioner's duty to:

(1) Notify insurance regulators of all the other states, territories of the United States, and the District of Columbia within 30 days when revoking or suspending the license of a member insurer, or making any formal order that the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from this State, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of ~~policyholders~~ policy owners, contract owners, certificate holders or creditors. ~~That notice shall be sent electronically through the NAIC headquarters and mailed to all insurance regulators within 30 days following the action taken or the date on which the action occurs.~~

...

(3) Report to the Board when the Commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that the member insurer may be delinquent.

...

1 (b) The Commissioner may seek the advice and recommendations of the Board  
 2 concerning any matter affecting the Commissioner's duties and responsibilities regarding the  
 3 financial condition of member insurers and ~~other entities~~insurers or health maintenance  
 4 organizations seeking admission to transact ~~insurance~~-business in this State.

5 (c) The Board may, upon majority vote, make reports and recommendations to the  
 6 Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or  
 7 conservation of any member insurer or germane to the solvency of any ~~company~~insurer or health  
 8 maintenance organization seeking to do an ~~insurance~~-business in this State. The reports and  
 9 recommendations are not public records.

10 ...

11 ~~(e) The Board may, upon majority vote, request that the Commissioner order an~~  
 12 ~~examination of any member insurer that the Board in good faith believes may be delinquent.~~  
 13 ~~Within 30 days of the receipt of the request, the Commissioner shall begin the examination. The~~  
 14 ~~examination may be conducted as an NAIC examination or may be conducted by persons the~~  
 15 ~~Commissioner designates. The examination report shall be treated as are other examination~~  
 16 ~~reports. In no event shall the examination report be released to the Board before its release to the~~  
 17 ~~public; but this does not preclude the Commissioner from complying with subsection (a) of this~~  
 18 ~~section. The Commissioner shall notify the Board when the examination is completed. The~~  
 19 ~~request for an examination shall be kept on file by the Commissioner, but shall not be open to~~  
 20 ~~public inspection before the release of the examination report to the public.~~

21 (f) The Board may, upon majority vote, make recommendations to the Commissioner for  
 22 the detection and prevention of member insurer delinquencies, insolvencies.

23 ~~(g) The Board shall, at the conclusion of any insurer insolvency in which the Association~~  
 24 ~~was obligated to pay covered claims, prepare a report to the Commissioner containing any~~  
 25 ~~information that it has in its possession bearing on the history and causes of the insolvency. The~~  
 26 ~~Board shall cooperate with the boards of directors of guaranty associations in other states in~~  
 27 ~~preparing a report on the history and causes of insolvency of a particular insurer, and the Board~~  
 28 ~~may adopt by reference any report prepared by such other associations."~~

29 **SECTION 1.1.(k)** G.S. 58-62-61 reads as rewritten:

30 **"§ 58-62-61. Miscellaneous provisions.**

31 (a) Nothing in this Article reduces the liability for unpaid assessments of the insureds or  
 32 enrollees of a delinquent insurer operating under an ~~insurance~~ea plan with assessment liability.

33 (b) Records shall be kept of all negotiations and meetings in which the Association or its  
 34 representatives are involved and in which the activities of the Association in carrying out its  
 35 powers and duties under G.S. 58-62-36 are discussed. Records of those negotiations or meetings  
 36 shall be made public only upon the termination of a liquidation, rehabilitation, or conservation  
 37 proceeding involving the delinquent insurer, upon the termination of the delinquency of the  
 38 member insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection  
 39 limits the duty of the Association to render a report of its activities under G.S. 58-62-66.

40 (c) For the purpose of carrying out its obligations under this Article, the Association is a  
 41 creditor of the delinquent insurer to the extent of assets attributable to covered policies reduced  
 42 by any amounts to which the Association is entitled as subrogee under G.S. 58-62-36(r). Assets  
 43 of the delinquent insurer attributable to covered policies shall be used to continue all covered  
 44 policies and pay all contractual obligations of the delinquent insurer as required by this Article.  
 45 Assets attributable to covered ~~policies, policies or contracts~~, as used in this subsection, are that  
 46 proportion of the assets that the reserves that should have been established for the policies or  
 47 contracts bear to the reserves that should have been established for all policies of insurance or  
 48 health benefit plans written by the delinquent insurer.

49 (d) Before the termination of any liquidation, rehabilitation, or conservation proceeding,  
 50 the court may take into consideration the contributions of the respective parties, including the  
 51 Association, the shareholders, contract owners, certificate holders, enrollees, and

1 ~~policy owners~~ policy owners of the insolvent insurer, and any other party with a bona fide interest,  
2 in making an equitable distribution of the ownership rights of the insolvent insurer. In making  
3 such a determination, consideration shall be given to the welfare of the ~~policyholders~~ policy  
4 owners, certificate holders, and enrollees of the continuing or successor member insurer.

5 (e) No distribution to stockholders, if any, of a delinquent insurer shall be made until and  
6 unless the Association has fully recovered the total amount of its valid claims with interest  
7 thereon for funds expended in carrying out its powers and duties under G.S. 58-62-36 with  
8 respect to the member insurer.

9 (f) If an order for liquidation or rehabilitation of ~~an~~ a member insurer domiciled in this  
10 State has been entered, the receiver appointed under the order has a right to recover on behalf of  
11 the member insurer, from any affiliate that controlled it, the amount of distributions, other than  
12 stock dividends paid by the member insurer on its capital stock, made at any time during the five  
13 years preceding the petition for liquidation or rehabilitation subject to the limitations of  
14 subsections (g) through (i) of this section.

15 (g) No such distribution is recoverable if the member insurer shows that when paid the  
16 distribution was lawful and reasonable, and that the member insurer did not know and could not  
17 reasonably have known that the distribution might adversely affect the member insurer's ability  
18 to fulfill its contractual obligations.

19 (h) Any person who was an affiliate that controlled the member insurer when the  
20 distributions were paid is liable up to the amount of distributions it received. Any person who  
21 was an affiliate that controlled the member insurer when the distributions were declared is liable  
22 up to the amount of distributions it would have received if they had been paid immediately. If  
23 two or more persons are liable with respect to the same distributions, they are jointly and  
24 severally liable.

25 ...."

26 **SECTION 1.1.(l)** G.S. 58-62-66 reads as rewritten:

27 "**§ 58-62-66. Examination of the Association; annual report.**

28 The Association is subject to examination and regulation by the Commissioner. The Board  
29 shall submit to the Commissioner each year, not later than 120 days after the Association's fiscal  
30 year, a financial report in a form approved by the Commissioner and a report of its activities  
31 during the preceding fiscal year. Upon the request of a member insurer, the Association shall  
32 provide the member insurer with a copy of the report."

33 **SECTION 1.1.(m)** G.S. 58-62-81 reads as rewritten:

34 "**§ 58-62-81. Stay of proceedings; reopening default judgments.**

35 All proceedings in which the insolvent insurer is a party in any court in this State shall be  
36 stayed ~~60~~180 days from the date an order of liquidation, rehabilitation, or conservation is final to  
37 permit proper legal action by the Association on any matters germane to its powers or duties. As  
38 to a judgment under any decision, order, verdict or finding based on default, the Association may  
39 apply to have the judgment set aside by the same court that made the judgment and may defend  
40 against such suit on the merits."

41 **SECTION 1.1.(n)** G.S. 58-62-86 reads as rewritten:

42 "**§ 58-62-86. Prohibited advertisement of Article in insurance sales; notice to policyholders.**

43 (a) No ~~person~~ person, including a member insurer, agent, or affiliate of a member insurer,  
44 shall make, publish, disseminate, circulate, or place before the public, or cause directly or  
45 indirectly to be made, published, disseminated, circulated, or placed before the public, in any  
46 newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter,  
47 or poster, or over any radio station or television station, or in any other way, any oral or written  
48 advertisement, announcement, or statement that uses the existence of the Association or this  
49 Article for the purpose of sale or solicitation of or inducement to purchase any kind of insurance  
50 or other coverage covered by this Article. However, this subsection does not apply to the

1 Association or any other person who does not sell or solicit ~~insurance~~ insurance or coverage by  
2 a health maintenance organization.

3 (b) Within 180 days after the effective date of this Article, the Association shall prepare  
4 a summary document that describes the general purposes and current limitations of this Article  
5 and that complies with subsection (c) of this section. This summary document shall be submitted  
6 to the Commissioner for the Commissioner's approval. Sixty days after receiving approval, no  
7 member insurer may deliver a policy ~~described in G.S. 58-62-21(b)~~ or contract to ~~any person~~  
8 policy owner, contract owner, certificate holder, or enrollee unless the summary document is  
9 delivered to ~~that person~~ the policy owner, contract owner, certificate holder, or enrollee before or  
10 at the time of delivery of the ~~policy~~ policy or contract, unless subsection (d) of this section  
11 applies. The summary document shall also be available upon request by a ~~policyholder~~ policy  
12 owner, contract owner, certificate holder, or enrollee. The distribution, delivery, contents, or  
13 interpretation of this summary document does not mean that either the policy or the contract or  
14 the ~~policyholder~~ policy owner, contract owner, certificate holder, or enrollee would be covered in  
15 the event of the ~~delinquency~~ impairment or insolvency of a member insurer. The summary  
16 document shall be revised by the Association as amendments to this Article require. Failure to  
17 receive this summary document does not give ~~any person~~ the policy owner, contract owner,  
18 certificate holder, enrollee, or insured any greater rights than those stated in this Article.

19 (c) The summary document prepared under subsection (b) of this section shall contain a  
20 clear and conspicuous disclaimer on its face. The Commissioner shall prescribe the form and  
21 content of the disclaimer. The disclaimer ~~shall~~ shall do all of the following:

- 22 (1) State the name and addresses of the Association and ~~Department~~ Department.
- 23 (2) Prominently warn the ~~policyholder~~ policy owner, contract owner, certificate  
24 holder, or enrollee that the Association may not cover the policy or contract  
25 or, if coverage is available, it will be subject to substantial limitations and  
26 exclusions and conditioned on continued residence in this ~~State~~ State.
- 27 (2a) State the types of policies or contracts for which guaranty funds will provide  
28 coverage.
- 29 (3) State that the member insurer and its agents are prohibited by law from using  
30 the existence of the Association for the purpose of sale or solicitation of or  
31 inducement to purchase any kind of ~~insurance~~ insurance or health  
32 maintenance organization coverage.
- 33 (4) Emphasize that the ~~applicant or policyholder~~ applicant, policy owner, contract  
34 owner, certificate holder, or enrollee should not rely on coverage under the  
35 Association when selecting an ~~insurer~~ insurer or health maintenance  
36 organization.
- 37 (4a) Explain rights available and procedures for filing a complaint to allege a  
38 violation of any provisions of this Article.
- 39 (5) Provide other information as directed by the ~~Commissioner~~ Commissioner,  
40 including, but not limited to, sources for information about the financial  
41 condition of member insurers provided that the information is not proprietary  
42 and is subject to disclosure under public records law.

43 (d) No ~~insurer~~ insurer, health maintenance organization, or agent may deliver a policy or  
44 contract described in G.S. 58-62-21(b) and excluded under G.S. 58-62-21(c) from coverage  
45 under this Article unless the ~~insurer~~ insurer, health maintenance organization, or agent, before or  
46 at the time of delivery, gives the ~~policyholder~~ policy or contract owner, certificate holder, or  
47 enrollee a separate written notice that clearly and conspicuously discloses that the policy or  
48 contract is not covered by the Association. The Commissioner shall prescribe the form and  
49 content of the notice."

50 **SECTION 1.1.(o)** G.S. 58-62-95 reads as rewritten:

51 "**§ 58-62-95. Use of deposits made by impaired or insolvent insurer.**"

1 Notwithstanding any other provision of this Chapter pertaining to the use of deposits made  
 2 by insurance or health maintenance organization companies for the protection of  
 3 ~~policyholders, policy or contract owners, certificate holders, or enrollees,~~ the Association shall  
 4 receive, upon its request, from the Commissioner and may expend, any deposit or deposits made,  
 5 whether or not made pursuant to statute, by ~~an~~ a member insurer determined to be impaired or  
 6 insolvent under this Article to the extent those deposits are needed by the Association to pay  
 7 contractual obligations of that impaired or insolvent insurer owed under covered policies as  
 8 required by this Article, and to the extent those deposits are needed to pay all expenses of the  
 9 Association relating to the impaired or insolvent insurer: Provided that the Commissioner may  
 10 retain and use an amount of the deposit up to ten thousand dollars (\$10,000) to defray  
 11 administrative costs to be incurred by the Commissioner in carrying out his powers and duties  
 12 with respect to the impaired or insolvent insurer, notwithstanding G.S. 58-5-70. The Association  
 13 shall account to the Commissioner and the impaired or insolvent insurer for all deposits received  
 14 from the Commissioner under this section. After the deposits of the impaired or insolvent insurer  
 15 received by the Association under this section have been expended by the Association for the  
 16 purposes set out in this section, the member insurers shall be assessed as provided by this Article  
 17 to pay any remaining liabilities of the Association arising under this Article."

18 **SECTION 1.2.(a)** G.S. 58-67-145 reads as rewritten:

19 "**§ 58-67-145. Rehabilitation, liquidation, or conservation of health maintenance**  
 20 **organization.**

21 Any rehabilitation, liquidation or conservation of a health maintenance organization shall be  
 22 deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall  
 23 be conducted under the supervision of the Commissioner pursuant to the law governing the  
 24 rehabilitation, liquidation, or conservation of insurance companies, except that the provisions of  
 25 ~~Articles~~ Article 48 and 62 of this Chapter shall not apply to health maintenance organizations.  
 26 The Commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a  
 27 health maintenance organization upon one or more grounds set out in Article 30 of this Chapter  
 28 or when in his opinion the continued operation of the health maintenance organization would be  
 29 hazardous either to the enrollees or to the people of this State."

30 **SECTION 1.2.(b)** G.S. 58-67-171 reads as rewritten:

31 "**§ 58-67-171. Other laws applicable to HMOs.**

32 The following provisions of this Chapter are applicable to HMOs that are subject to this  
 33 ~~Article.~~ Article are as follows:

34 G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
35	
36 G.S. 58-2-150.	Oath required for compliance with law.
37 G.S. 58-2-155.	Investigation of charges.
38 G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
39	
40	
41 G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
42	
43 G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
44	
45 G.S. 58-2-190.	Commissioner may require special reports.
46 G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
47	
48 G.S. 58-2-200.	Books and papers required to be exhibited.
49 G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
50	
51 G.S. 58-3-100(c),(e).	Insurance company licensing provisions.

1	G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
2	G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
3		
4	G.S. 58-7-73.	Dissolution of insurers.
5	Part 7 of Article 10.	Annual Financial Reporting.
6	G.S. 58-50-35	Notice of nonpayment of premium required before forfeiture.
7	G.S. 58-51-15(a)(2)b.	Accident and health policy provisions.
8	G.S. 58-51-17	Portability for accident and health insurance.
9	G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
10		
11	G.S. 58-51-35.	Insurers and others to afford coverage to mentally retarded and physically handicapped children.
12		
13	G.S. 58-51-45.	Policies to be issued to any person possessing the sickle-cell trait or hemoglobin C trait.
14		
15	<u>G.S. 58-62</u>	<u>Life and Health Insurance Guaranty Association."</u>

16           **SECTION 1.3.** Sections 1.1 and 1.2 of this act are effective when this act becomes  
 17 law. The provisions of Sections 1.1 and 1.2 of this act shall not apply to any member insurer that  
 18 is insolvent or unable to fulfill its contractual obligations on the effective date of this act.  
 19

20 **PART II. AMEND SURPLUS LINES ACT AND MAKE CLARIFYING CHANGES**

21           **SECTION 2.1.(a)** G.S. 58-21-2 reads as rewritten:

22 "**§ 58-21-2. Relationship to other insurance laws.**

23 ~~Unless~~Except as provided in G.S. 58-21-21(c) and (g), unless surplus lines insurance, surplus  
 24 lines licensees, nonadmitted domestic surplus lines insurers, or nonadmitted insurers are  
 25 specifically referenced in a particular section of this Chapter, no sections contained in Articles  
 26 of this Chapter other than this Article apply to surplus lines insurance, surplus lines licensees,  
 27 nonadmitted domestic surplus lines insurers, or nonadmitted insurers."

28           **SECTION 2.1.(b)** G.S. 58-21-5 reads as rewritten:

29 "**§ 58-21-5. Purposes; necessity for regulation.**

30 This Article shall be liberally construed and applied to promote its underlying purposes,  
 31 which ~~include~~include all of the following:

- 32           (1) Protecting persons in this State seeking ~~insurance;~~insurance.
- 33           (2) Permitting surplus lines insurance to be placed with reputable and financially  
 34 sound nonadmitted domestic surplus lines insurers, nonadmitted insurers and  
 35 exported from this State pursuant to this ~~Article;~~Article.
- 36           (3) Establishing a system of regulation that will permit orderly access to surplus  
 37 lines insurance in this State and encourage admitted insurers to provide new  
 38 and innovative types of insurance available to consumers in this ~~State;~~  
 39 and State.
- 40           (4) Protecting revenues of this State."

41           **SECTION 2.1.(c)** G.S. 58-21-10 reads as rewritten:

42 "**§ 58-21-10. Definitions.**

43 As used in this Article:

- 44           (1) "Admitted insurer" means an insurer licensed to engage in the business of  
 45 insurance in this State.
- 46           ...
- 47           (3) "Eligible surplus lines insurer" means an alien insurer as defined in ~~G.S.~~  
 48 ~~58-21-17~~G.S. 58-21-17, a nonadmitted domestic surplus lines insurer, or a  
 49 nonadmitted insurer with which a surplus lines licensee may place surplus  
 50 lines insurance under G.S. 58-21-20.

- 1 (4) "Export" means to place surplus lines insurance with a nonadmitted domestic  
 2 surplus lines insurer or a nonadmitted insurer.
- 3 (4a) "Nonadmitted domestic surplus lines insurer" means an insurer that is  
 4 domiciled in and authorized pursuant to G.S. 58-21-21 to transact surplus lines  
 5 insurance in this State.
- 6 (5) "Nonadmitted insurer" means an insurer not licensed to do an insurance  
 7 business in this State. "Nonadmitted insurer" includes insurance exchanges  
 8 authorized under the laws of various states. "Nonadmitted insurer" does not  
 9 include a risk retention group, as defined in G.S. 58-22-10(10).
- 10 ...
- 11 (8) "Surplus lines insurance" means any insurance in this State of risks resident,  
 12 located, or to be performed in this State, permitted to be placed through a  
 13 surplus lines licensee with a nonadmitted domestic surplus lines insurer or a  
 14 nonadmitted insurer eligible to accept such insurance, including salary  
 15 protection insurance. The term does not include reinsurance, commercial  
 16 aircraft insurance, wet marine and transportation insurance, insurance  
 17 independently procured pursuant to G.S. 58-28-5, life and accident or health  
 18 insurance, and annuities.
- 19 (9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to place  
 20 insurance on risks resident, located, or to be performed in this State with a  
 21 nonadmitted domestic surplus lines insurer or with nonadmitted insurers  
 22 eligible to accept such insurance.
- 23 (10) "Wet marine and transportation insurance" ~~means:~~means any of the following:  
 24 a. Insurance upon vessels, crafts, hulls and of interests therein or with  
 25 relation ~~thereto;~~thereto.
- 26 b. Insurance of marine builder's risks, marine war risks and contracts of  
 27 marine protection and indemnity ~~insurance;~~insurance.
- 28 c. Insurance of freights and disbursements pertaining to a subject of  
 29 insurance coming within this ~~subsection;~~and subsection.
- 30 d. Insurance of personal property and interests therein, in the course of  
 31 exportation from or importation into any country, or in the course of  
 32 transportation coastwise or on inland waters including transportation  
 33 by land, water, or air from point of origin to final destination, in  
 34 connection with any and all risks or perils of navigation, transit or  
 35 transportation, and while being prepared for and while awaiting  
 36 shipment, and during any delays, transshipment, or reshipment  
 37 incident thereto."

38 **SECTION 2.1.(d)** G.S. 58-21-16(a)(2) reads as rewritten:

39 "(2) The exempt commercial purchaser has subsequently requested in writing the  
 40 licensee to procure or place such insurance from a nonadmitted domestic  
 41 surplus lines insurer or a nonadmitted insurer."

42 **SECTION 2.1.(e)** G.S. 58-21-20 reads as rewritten:

43 **"§ 58-21-20. Eligible surplus lines insurer required.**

44 ...

45 (a1) A surplus lines licensee shall not place coverage with a nonadmitted domestic surplus  
 46 lines insurer unless, at the time of placement, the surplus lines licensee has verified that the  
 47 insurer is a nonadmitted domestic surplus lines insurer as defined in G.S. 58-21-10."

48 **SECTION 2.1.(f)** Article 21 of Chapter 58 of the General Statutes is amended by  
 49 adding a new section to read as follows:

50 **"§ 58-21-21. Nonadmitted domestic surplus lines insurer.**

1 (a) Notwithstanding any other law, a domestic insurer possessing minimum capital and  
 2 surplus of at least fifteen million dollars (\$15,000,000), pursuant to a resolution by its board of  
 3 directors and on the written approval of the Commissioner, may be designated as a nonadmitted  
 4 domestic surplus lines insurer.

5 (b) A nonadmitted domestic surplus lines insurer shall only write surplus lines insurance  
 6 in this State procured pursuant to the requirements of this Article. A nonadmitted domestic  
 7 surplus lines insurer may write surplus lines insurance in any other jurisdiction in which the  
 8 insurer is eligible to write surplus lines insurance if the nonadmitted domestic surplus lines  
 9 insurer complies with any requirements of that jurisdiction.

10 (c) Insurance written by a nonadmitted domestic surplus lines insurer is subject to the  
 11 premium receipts tax required by G.S. 58-21-85.

12 (d) For the purposes of the federal Nonadmitted and Reinsurance Act of 2010 (15 U.S.C.  
 13 § 8206), a domestic nonadmitted surplus lines insurer shall be considered a nonadmitted insurer  
 14 as the term is defined in the Act with respect to risks insured in this State.

15 (e) Surplus lines insurance policies issued in this State by a nonadmitted domestic surplus  
 16 lines insurer are not subject to the protection of or other provisions of Article 48 or 62 of this  
 17 Chapter.

18 (f) Surplus lines insurance policies issued in this State by a nonadmitted domestic surplus  
 19 lines insurer are not subject to and are exempt from all statutory requirements relating to  
 20 insurance rating and rating plans, policy forms, policy cancellation, and nonrenewal in the same  
 21 manner and to the same extent as a surplus lines insurer domiciled in another state.

22 (g) All financial and solvency requirements imposed upon domestic admitted insurers  
 23 including the following, shall apply to nonadmitted domestic surplus lines insurers unless  
 24 nonadmitted domestic surplus lines insurers are otherwise specifically exempted:

25 <u>G.S. 58-1-5.</u>	<u>Definitions.</u>
26 <u>G.S. 58-2-125.</u>	<u>Authority over all insurance companies; no exemptions from</u>
27	<u>license.</u>
28 <u>G.S. 58-2-131.</u>	<u>Examinations to be made; authority, scope, scheduling, and</u>
29	<u>conduct of examinations.</u>
30 <u>G.S. 58-2-132.</u>	<u>Examination Reports.</u>
31 <u>G.S. 58-2-133.</u>	<u>Conflict of interest; cost of examinations; immunity from</u>
32	<u>liability.</u>
33 <u>G.S. 58-2-134.</u>	<u>Cost of certain examinations.</u>
34 <u>G.S. 58-2-150.</u>	<u>Oath required for compliance with law.</u>
35 <u>G.S. 58-2-155.</u>	<u>Investigation of charges.</u>
36 <u>G.S. 58-2-160.</u>	<u>Reporting and investigation of insurance and reinsurance</u>
37	<u>fraud and the financial condition of licensees; immunity from</u>
38	<u>liability.</u>
39 <u>G.S. 58-2-162.</u>	<u>Embezzlement by insurance agents, brokers, or</u>
40	<u>administrators.</u>
41 <u>G.S. 58-2-165.</u>	<u>Annual, semiannual, monthly, or quarterly statements to be</u>
42	<u>filed with Commissioner.</u>
43 <u>G.S. 58-2-185.</u>	<u>Record of business kept by companies and agents;</u>
44	<u>Commissioner may inspect.</u>
45 <u>G.S. 58-2-190.</u>	<u>Commissioner may require special reports.</u>
46 <u>G.S. 58-2-195.</u>	<u>Commissioner may require records, reports, etc., for</u>
47	<u>agencies, agents, and others.</u>
48 <u>G.S. 58-2-200.</u>	<u>Books and papers required to be exhibited.</u>
49 <u>G.S. 58-7-21.</u>	<u>Credit allowed a domestic ceding insurer.</u>

1	<u>G.S. 58-7-26.</u>	<u>Asset or reduction from liability for reinsurance ceded by a</u>
2		<u>domestic insurer to an assuming insurer not meeting the</u>
3		<u>requirements of G.S. 58-7-121.</u>
4	<u>G.S. 58-7-30.</u>	<u>Insolvent ceding insurer.</u>
5	<u>G.S. 58-7-31.</u>	<u>Life and health reinsurance agreements.</u>
6	<u>G.S. 58-7-46.</u>	<u>Notification to Commissioner for president or chief</u>
7		<u>executive officer changes.</u>
8	<u>G.S. 58-7-73.</u>	<u>Dissolution of insurers.</u>
9	<u>G.S. 58-7-160.</u>	<u>Investments unlawfully acquired.</u>
10	<u>G.S. 58-7-162.</u>	<u>Allowed or admitted assets.</u>
11	<u>G.S. 58-7-163.</u>	<u>Assets not allowed.</u>
12	<u>G.S. 58-7-165.</u>	<u>Eligible investments.</u>
13	<u>G.S. 58-7-167.</u>	<u>General qualifications.</u>
14	<u>G.S. 58-7-168.</u>	<u>Authorization of investment.</u>
15	<u>G.S. 58-7-170.</u>	<u>Diversification.</u>
16	<u>G.S. 58-7-172.</u>	<u>Cash and deposits.</u>
17	<u>G.S. 58-7-173.</u>	<u>Permitted insurer investments.</u>
18	<u>G.S. 58-7-179.</u>	<u>Mortgage loans.</u>
19	<u>G.S. 58-7-180.</u>	<u>Chattel mortgages.</u>
20	<u>G.S. 58-7-183.</u>	<u>Special consent investments.</u>
21	<u>G.S. 58-7-185.</u>	<u>Prohibited investments and investment underwriting.</u>
22	<u>G.S. 58-7-188.</u>	<u>Time limit for disposal of ineligible property and securities;</u>
23		<u>effect of failure to dispose.</u>
24	<u>G.S. 58-7-190.</u>	<u>Valuation of securities and investments.</u>
25	<u>G.S. 58-7-193.</u>	<u>Valuation of property.</u>
26	<u>G.S. 58-7-197.</u>	<u>Replacing certain assets; reporting certain liabilities.</u>
27	<u>G.S. 58-7-200.</u>	<u>Investment transactions.</u>
28	<u>G.S. 58-7-205.</u>	<u>Derivative transactions.</u>
29	<u>Part 7 of Article 10.</u>	<u>Annual Financial Reporting.</u>
30	<u>Part 10 of Article 10.</u>	<u>Risk Management and Own Risk and Solvency Assessment.</u>
31	<u>Article 12.</u>	<u>Risk-Based Capital Requirements.</u>
32	<u>Article 13.</u>	<u>Asset Protection Act.</u>
33	<u>Article 19.</u>	<u>Insurance Holding Company System Regulatory Act.</u>
34	<u>Article 30.</u>	<u>Insurers Supervision, Rehabilitation, and Liquidation."</u>

SECTION 2.1.(g) G.S. 58-21-40 reads as rewritten:

"§ 58-21-40. **Surplus lines regulatory support organization.**

(a) ~~A surplus lines~~ The North Carolina Surplus Lines Association (NCSLA) shall serve as the regulatory support organization of surplus lines licensees shall be formed to and shall carry out the following functions:

- (1) Facilitate and encourage compliance by resident and nonresident surplus lines licensees with the laws of this State and the rules and regulations of the Commissioner relative to surplus lines insurance.
- (2) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market.
- (3) Receive and disseminate to surplus lines licensees information about surplus lines insurance, including, without limitation, new electronic filing procedures approved by the Commissioner, changes in the list of eligible surplus lines insurers, and modifications in coverages, procedures, and requirements as may be requested by the Commissioner.
- (4) Establish and operate a stamping office to process all surplus lines insurance and remit premium taxes for those coverages under G.S. 58-21-85 by means

- 1 satisfactory to the Commissioner, and charge surplus lines licensees a fee for  
2 such processing.
- 3 (b) The ~~regulatory support organization—NCSLA~~ shall file with the  
4 ~~Commissioner~~ Commissioner all of the following:
- 5 (1) A copy of its constitution, articles of agreement or association, or certificate  
6 of ~~incorporation~~ incorporation.
  - 7 (2) A copy of its bylaws and rules governing its ~~activities~~ activities.
  - 8 (3) An annually updated list of ~~resident and nonresident surplus lines~~  
9 ~~licensees~~ licensees.
  - 10 (4) The name and address of a resident of this State upon whom notices or orders  
11 of the Commissioner or processes issued at his direction may be ~~served~~;  
12 ~~and served~~.
  - 13 (5) An agreement that the Commissioner may examine the ~~regulatory support~~  
14 ~~organization—NCSLA~~ in accordance with subsection (c) of this section.
- 15 (c) The Commissioner may, at times deemed appropriate, make or cause to be made an  
16 examination of ~~each regulatory support organization; the NCSLA~~ in which case the provisions  
17 of G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-180, 58-2-185,  
18 58-2-190, 58-2-195, and 58-2-200 shall apply. If the Commissioner finds the ~~regulatory support~~  
19 ~~organization—NCSLA~~ or any surplus lines licensee, ~~whether resident or nonresident,~~ licensee to  
20 be in violation of this Article, the Commissioner may issue an order requiring the discontinuance  
21 of the violation.
- 22 (d) Each surplus lines licensee shall maintain active membership in a ~~regulatory support~~  
23 ~~organization—the NCSLA~~ as a condition of continued licensure under this Article."
- 24 **SECTION 2.1.(h)** G.S. 58-21-45(f) reads as rewritten:
- 25 "(f) Every evidence of insurance negotiated, placed, or procured under the provisions of  
26 this Article issued by the surplus lines licensee shall bear the name of the licensee and one of the  
27 following legends following legends, whichever is applicable, in 12 point type and in contrasting  
28 color or in 12 point type and underlined and in bold print:
- 29 (1) For nonadmitted insurers: "The insurance company with which this coverage  
30 has been placed is not licensed by the State of North Carolina and is not  
31 subject to its supervision. In the event of the insolvency of the insurance  
32 company, losses under this policy will not be paid by any State insurance  
33 guaranty or solvency fund."
  - 34 (2) For nonadmitted domestic surplus lines insurers: "The insurance company  
35 with which this coverage has been placed is domiciled and authorized by the  
36 State of North Carolina and is subject to its supervision. However, in the event  
37 of the insolvency of the insurance company, losses under this policy will not  
38 be paid by any State insurance guaranty or solvency fund.""
- 39 **SECTION 2.1.(i)** G.S. 58-21-50 reads as rewritten:
- 40 **"§ 58-21-50. Duty to notify insured.**
- 41 No contract of insurance placed by a surplus lines licensee under this Article shall be binding  
42 upon the insured and no premium charged therefor shall be due and payable until the producing  
43 broker or surplus lines licensee notifies the insured in writing, a copy of which shall be  
44 maintained by the broker or licensee with the records of the contract and available for possible  
45 examination, that:
- 46 (1) ~~The~~ For surplus lines insurers that are not a nonadmitted domestic surplus lines  
47 insurer, the insurer with which the coverage has been placed is not licensed  
48 by this State and is not subject to its supervision; and supervision and in the  
49 event the insurer who issued this policy becomes insolvent, losses will not be  
50 paid by any State guaranty or solvency fund.

- (2) ~~In~~For nonadmitted domestic surplus lines insurers, in the event of the insolvency of the surplus lines ~~insurer~~insurer with which the coverage has been placed, losses will not be paid by any State insurance guaranty or solvency fund.

Nothing in this section shall nullify any agreement by any insurer to provide insurance."

**SECTION 2.1.(j)** G.S. 58-21-65 reads as rewritten:

**"§ 58-21-65. Licensing of surplus lines license.**

"(a) For insureds whose home state is this State, no agent or broker licensed by the Commissioner shall directly procure any contract of surplus lines insurance with any nonadmitted domestic surplus lines insurer or nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the Commissioner.

(b) The Commissioner shall issue a surplus lines license to any qualified holder of a current ~~property broker's or property and casualty~~ agent's license, but only when the ~~broker or~~ agent ~~has~~has done all of the following:

- (1) Remitted the fifty dollars (\$50.00) annual fee to the ~~Commissioner;~~Commissioner.
- (2) Submitted a completed license application on a form supplied by the Commissioner, and the application has been approved by the ~~Commissioner;~~Commissioner.
- (3) Passed a qualifying examination approved by the Commissioner; except that all holders of a license prior to July 11, 1985 shall be deemed to have passed such an ~~examination;~~ and examination.
- (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17, 2004.

...."

**SECTION 2.1.(k)** G.S. 58-21-75 reads as rewritten:

**"§ 58-21-75. Records of surplus lines licensee.**

Each surplus lines licensee shall keep in his or her office in this State a full and true record of each surplus lines insurance contract placed by or through the licensee, including a copy of the policy, certificate, cover note, or other evidence of insurance. The record shall include the following items:

- (1) Amount of the insurance and perils ~~insured;~~insured.
- (2) Brief description of the property insured and its ~~location;~~location.
- (3) Gross premium ~~charged;~~charged.
- (4) Any return premium ~~paid;~~paid.
- (5) Rate of premium charged upon the several items of ~~property;~~property.
- (6) Effective date of the contract, and the terms of the ~~contract;~~contract.
- (7) Name and address of the ~~insured;~~insured.
- (8) Name and address of the ~~insurer;~~insurer.
- (9) Amount of tax and other sums to be collected from the ~~insured;~~ and insured.
- (10) Identity of the producing broker, any confirming correspondence from the insurer or its representative, and the application.

The record of each contract shall be kept open at all reasonable times to examination by the Commissioner without notice for a period not less than ~~three~~five years following termination of the contract."

**SECTION 2.1.(l)** G.S. 58-21-85(a) reads as rewritten:

"(a) Gross premiums charged, less any return premiums, for surplus lines insurance on insureds for whom North Carolina is the home state are subject to a premium receipts tax of five percent (5%), which shall be collected in a manner approved by the Commissioner, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the State to the licensee shall be returned by the licensee directly to the policyholder directly; ~~policyholder.~~

1 The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason,  
2 any part of such tax. To the extent that other states in which portions of the properties, risks, or  
3 exposures reside have failed to enter into a compact or reciprocal allocation procedure with this  
4 State, the premium tax collected shall be retained by this State."

5 **SECTION 2.1.(m)** G.S. 58-21-105(a) reads as rewritten:

6 "(a) Any surplus lines licensee who in this State represents or aids a nonadmitted domestic  
7 surplus lines insurer or a nonadmitted insurer in violation of this Article shall be guilty of a Class  
8 1 misdemeanor."  
9

### 10 **PART III. AMEND CONSENT TO RATE LAWS**

11 **SECTION 3.1.(a)** G.S. 58-36-30 reads as rewritten:

#### 12 **"§ 58-36-30. Deviations.**

13 (a) Except as permitted by G.S. 58-36-100 for workers' compensation loss costs filings,  
14 no insurer and no officer, agent, or representative of an insurer shall knowingly issue or deliver  
15 or knowingly permit the issuance or delivery of any policy of insurance in this State that does  
16 not conform to the rates, rating plans, classifications, schedules, rules and standards made and  
17 filed by the Bureau. An insurer may deviate from the rates promulgated by the Bureau if the  
18 insurer has filed the proposed deviation with the Bureau and the Commissioner, if the proposed  
19 deviation is based on sound actuarial principles, and if the proposed deviation is approved by the  
20 Commissioner. Amendments to deviations are subject to the same requirements as initial filings.  
21 An insurer may terminate a deviation only if the deviation has been in effect for a period of six  
22 months before the effective date of the termination and the insurer notifies the Commissioner of  
23 the termination no later than 15 days before the effective date of the termination.

24 (b) This subsection applies only to insurance against loss to automobile physical damage  
25 and related expenses. A rate in excess of that promulgated by the Bureau may be charged by an  
26 insurer on any specific risk if the higher rate is charged in accordance with rules adopted by the  
27 Commissioner and with the knowledge and written consent of the insured. ~~The insurer is not~~  
28 ~~required to obtain the written consent of the insured on any renewal of or endorsement to the~~  
29 ~~policy if the policy renewal or endorsement states that the rates are greater than those rates that~~  
30 ~~are applicable in the State of North Carolina. The insurer shall retain the signed consent form and~~  
31 ~~other policy information for each insured and make this information available to the~~  
32 ~~Commissioner, upon request of the Commissioner. This subsection may be used to provide motor~~  
33 ~~vehicle liability coverage limits above those required under Article 9A of Chapter 20 of the~~  
34 ~~General Statutes and above those cedable to the Facility under Article 37 of this Chapter to~~  
35 ~~persons whose personal excess liability insurance policies require that they maintain specific~~  
36 ~~higher liability coverage limits. Any data obtained by the Commissioner under this subsection is~~  
37 ~~proprietary and confidential and is not a public record under G.S. 132-1 or~~  
38 ~~G.S. 58-2-100.~~ Commissioner. An insurer shall give notice to the insured that the rates used to  
39 calculate the premium for the policy are greater than those rates that are applicable in the State  
40 of North Carolina by including the following language in the policy on page one of the  
41 declarations page or on a separate page before the declarations page, in at least 14 point type or  
42 in a font size larger than the remainder of the document whichever is larger, bolded, and all  
43 capitalized:

44 NOTICE: THE PREMIUM THAT WE ARE CHARGING FOR AUTOMOBILE  
45 PHYSICAL DAMAGE AND RELATED EXPENSES THAT COVERS THE  
46 DAMAGE TO YOUR COVERED VEHICLE(S) EXCEEDS THE PREMIUM  
47 BASED UPON THE APPROVED RATES IN NORTH CAROLINA, IN  
48 ACCORDANCE WITH G.S. 58-36-30(b).

49 The disclosure statement noted above in this subsection shall be included on any renewal of or  
50 endorsement to the policy when the rates charged exceed the approved manual rate. The insurer  
51 shall retain consent to rate information for each insured and make this information available to

1 the Commissioner, upon request of the Commissioner. This subsection may be used to provide  
2 motor vehicle liability coverage limits above those required under Article 9A of Chapter 20 of  
3 the General Statutes and above those that could be ceded to the North Carolina Reinsurance  
4 Facility under Article 37 of this Chapter to persons whose personal excess liability insurance  
5 policies require that they maintain specific higher liability coverage limits. Any data obtained by  
6 the Commissioner under this subsection is proprietary and confidential and is not a public record  
7 under G.S. 132-1 or G.S. 58-2-100.

8 (b1) This subsection applies only to insurance against loss to residential ~~real~~-property  
9 with not more than four housing units. A rate in excess of that promulgated by the Bureau may  
10 be charged by an insurer on any specific risk if the higher rate is charged in accordance with rules  
11 adopted by the ~~Commissioner and is charged with the knowledge and written consent of the~~  
12 ~~insured-Commissioner~~. An insurer shall give ~~reasonable~~ notice to the insured that the rates used  
13 to calculate the premium for the policy are greater than those rates that are applicable in the State  
14 of North Carolina by including the following language on the insured's written consent to rate  
15 form in at least 14 point type, bolded, and underlined: in the policy on page one of the declarations  
16 page or on a separate page before the declarations page, in at least 14 point type or in a font size  
17 larger than the remainder of the document whichever is larger, bolded, and all capitalized:

18 NOTICE: IN ACCORDANCE WITH G.S. 58-36-30(b1), THE PREMIUM USING  
19 NORTH CAROLINA RATE BUREAU'S APPROVED RATES FOR THE  
20 HOMEOWNER'S INSURANCE COVERAGE I APPLIED FOR IS \$ \_\_\_\_\_. THE  
21 PREMIUM FOR THIS COVERAGE IS \$ \_\_\_\_\_. THE TOTAL PERCENTAGE  
22 INCREASE ABOVE THE APPROVED RATES IS \_\_\_\_\_%. BASED UPON THE  
23 APPROVED RATES IN NORTH CAROLINA FOR RESIDENTIAL PROPERTY  
24 INSURANCE COVERAGE APPLIED FOR WOULD BE \$ \_\_\_\_\_ . OUR  
25 PREMIUM FOR THIS COVERAGE IS \$ \_\_\_\_\_.

26 ~~The insurer shall provide the rate information on the disclosure statement above, as~~  
27 ~~applicable, to the insured.~~ The disclosure statement noted above in this subsection shall be  
28 included on any renewal of or endorsement to the policy ~~manual rate following the initial written~~  
29 ~~consent of an insured. However, once an initial written consent to rate is received, the insurer is~~  
30 ~~not required to obtain the written consent of the insured on any renewal of or endorsement to the~~  
31 ~~policy. The insurer shall give at least 30 days' notice to the insured for all written consents to rate~~  
32 ~~and notices required under this subsection on all policy renewals and endorsements. when the~~  
33 ~~rates charged exceed the approved manual rate.~~ The insurer shall retain ~~the signed consent form~~  
34 ~~and other policy to rate~~ information for each insured and make this information available to the  
35 Commissioner, upon request of the Commissioner. Any data obtained by the Commissioner  
36 under this subsection is proprietary and confidential and is not a public record under G.S. 132-1  
37 or G.S. 58-2-100.

38 (b2) Notwithstanding subsection (b1) of this section, the Commissioner shall collect  
39 annually from all insurers and publish on the Department's Web site no later than July 1 the  
40 following data aggregated across all insurers for each geographical rate-making territory:

- 41 (1) The percentage of policies for which a consent to rate has been obtained.
- 42 (2) The average difference between the approved premium and the consented  
43 premium.

44 The Commissioner shall designate the format and manner to collect the data to be published.

45 Any nonaggregated data obtained by the Commissioner, including data identifying individual  
46 insurers or insureds, under this subsection is proprietary and confidential and is not a public  
47 record under G.S. 132-1 or G.S. 58-2-100. This subsection applies only to insurance against loss  
48 to residential real property with not more than four housing units.

49 (c) Any approved rate under subsection (b) of this section with respect to workers'  
50 compensation and employers' liability insurance written in connection therewith shall be  
51 furnished to the Bureau.

1 (d) Notwithstanding any other provision of law prohibiting insurance rate differentials  
2 based on age, with respect to nonfleet private passenger motor vehicle insurance under the  
3 jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State, subject  
4 to the Commissioner's approval, a downward deviation in the rates for insureds who are 55 years  
5 of age or older. A member of the Bureau may condition a deviation under this subsection or a  
6 deviation under subsection (a) of this section on the successful completion of a motor vehicle  
7 accident prevention course that has been approved by the Commissioner of Motor Vehicles, as  
8 designated in the deviation.

9 (e) Each insurer shall collect consent to rate data for nonfleet private passenger motor  
10 vehicle physical damage and homeowners residential property (all forms excluding HO4 and  
11 HO6) with not more than four housing units and transmit the data electronically for each policy  
12 to the Commissioner on a semi-annual basis in a format prescribed and designated by the  
13 Commissioner:

14 (1) NAIC Company Code.

15 (2) Company Name.

16 (3) Policy Number.

17 (4) Amount of Coverage A Insurance (Homeowners).

18 (5) Effective Date.

19 (6) Expiration Date.

20 (7) Zip Code.

21 (8) Actual Homeowners Full Term Premium.

22 (9) Actual Automobile Physical Damage Full Term Premium.

23 (10) NC Rate Bureau Homeowners Full Term Premium.

24 (11) NC Rate Bureau Automobile Physical Damage Full Term Premium excluding  
25 SDIP charges.

26 (12) New Policy or Renewal Policy.

27 (13) Such other information that may be required by any rule adopted by the  
28 Commissioner."

29 **SECTION 3.1.(b)** This section becomes effective January 1, 2019, and applies to  
30 policies issued, renewed, or amended on or after that date.

31  
32 **PART IV. AMEND AND MAKE TECHNICAL CHANGES TO VARIOUS INSURANCE**  
33 **LAWS, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE**

34  
35 **AMEND FEDERAL HOME LOAN BANK ADMITTED ASSET**

36 **SECTION 4.1.** G.S. 58-7-163(9) reads as rewritten:

37 "(9) Any asset that is encumbered in any manner unless the asset is authorized  
38 under G.S. 58-7-187 or ~~G.S. 58-7-162(13)~~. ~~For G.S. 58-7-162(13); provided~~  
39 ~~that~~ an asset that is used as collateral to secure access to advances from a  
40 federal home loan bank, as defined by G.S. 58-30-10(9a), ~~the amount of the~~  
41 ~~asset's par value that exceeds the par amount of any outstanding obligations~~  
42 ~~to the federal home loan bank shall be considered an unencumbered admitted~~  
43 ~~asset.~~ not be disallowed under the provisions of this section."  
44

45 **REVISE LOAN TO VALUE REQUIREMENTS FOR INSURER MORTGAGE**  
46 **INVESTMENTS**

47 **SECTION 4.2.** G.S. 58-7-179(c) reads as rewritten:

48 "(c) No such mortgage loan or loans made or acquired by an insurer on any one property  
49 shall, at the time of investment by the insurer, exceed the larger of the following amounts, as  
50 applicable:

- 1 (1) Ninety-five percent (95%) of the value of the real property or leasehold
- 2 securing the real property in the case of a mortgage on a dwelling primarily
- 3 intended for occupancy by not more than four families if they insure down to
- 4 ~~seventy five percent (75%)~~ eighty percent (80%) with a licensed mortgage
- 5 insurance company, or ~~seventy five percent (75%)~~ eighty percent (80%) of
- 6 the value in the case of other real estate mortgages;
- 7 (2) The amount of any insurance or guaranty of the loan by the United States or
- 8 by an agency or instrumentality thereof; or
- 9 (3) The percentage-of-value limit on the amount of the loan applicable under
- 10 subdivision (1) of this subsection, plus the amount by which the excess of the
- 11 loan over the percentage-of-value limit is insured or guaranteed by the United
- 12 States or by any agency or instrumentality thereof."

**AMEND NONRESIDENT AGENT LICENSING REQUIREMENT**

**SECTION 4.3.** G.S. 58-33-30(h)(2) reads as rewritten:

"(2) Nonresident.

a. An individual may qualify for a license under this Article as a nonresident if he holds a like license in another state or territory of the United States. An individual may qualify for a license as a nonresident motor vehicle damage appraiser or a nonresident adjuster if the applicant's state of residency does not offer such licenses and such applicant meets all other requirements for licensure of a resident. A license issued to a nonresident of this State shall grant the same rights and privileges afforded a resident licensee, except as provided in subsection (i) of this section.

a1. If a nonresident licensee's license in his or her home state is no longer in good standing for any reason, the nonresident licensee's license issued by the Commissioner shall automatically lapse 30 days after the loss of the nonresident's home state license. Within 30 days following the lapse, the nonresident's lapsed license may be reinstated if (i) the nonresident licensee is otherwise entitled to licensure and (ii) he or she provides proof satisfactory to the Commissioner that his or her home state license has been reinstated or reissued. A lapsed nonresident license may also be reinstated upon proof satisfactory to the Commissioner that the nonresident has relocated to another jurisdiction, obtained a new home state license, and has filed a change of address notice with the Commissioner within 60 days after the issuance of the new home state license. If the lapsed nonresident license is not reinstated as provided herein, the nonresident must submit a new application for licensure to the Commissioner.

...."

**INSURANCE PRODUCER NOTICE REQUIREMENT CONFORMING CHANGE**

**SECTION 4.4.** G.S. 58-33-56(d) reads as rewritten:

"(d) Within 15 days after making the notification required by subsections (a), (b), and (c) of this section, the insurer shall ~~mail a copy of the notification to the producer at the producer's last known address.~~ notify the producer using a form prescribed by the Commissioner. If the producer is terminated for cause for any of the reasons listed in G.S. 58-33-46(a), the insurer shall provide a copy of the notification to the producer at the producer's last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier."

**AMEND PORTABLE ELECTRONICS INSURANCE NOTICE REQUIREMENTS**

**SECTION 4.5.** G.S. 58-44A-10 is amended by adding a new subsection to read:

"(e) Notices and correspondence may be sent either by mail or by electronic means as set forth in this subsection. The consumer may provide an electronic mail address to the insurer or vendor of portable electronics which shall be considered to be the consumer's consent to receive notices and correspondence by electronic means so long as a disclosure to that effect is provided to the consumer within 30 days following the purchase of the portable electronics insurance."

**AMEND PREFERRED PROVIDER DEFINITION**

**SECTION 4.6.(a)** G.S. 58-50-56(a)(2) reads as rewritten:

"(2) "Preferred provider" means a health care provider who has agreed to accept special reimbursement or other terms for health care services from an insurer for health care ~~services on a fee for service basis.~~services. A "preferred provider" is not a health care provider participating in any prepaid health service or capitation arrangement implemented or administered by the Department of Health and Human Services or its representatives."

**SECTION 4.6.(b)** G.S. 58-50-56(e) is repealed.

**SECTION 4.6.(c)** G.S. 58-65-1(a) reads as rewritten:

"(a) Any corporation organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital or medical or dental service plan whereby hospital care or medical or dental service may be provided in whole or in part by the corporation or by hospitals, physicians, or dentists participating in the plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise provided.

The term "hospital service plan" as used in this Article includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations or any other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association or the American Medical Association.

The term "medical service plan" as used in this Article includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical or any other professional services authorized or permitted to be furnished by a duly licensed physician or other provider listed in G.S. 58-50-30. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

The term "dental service plan" as used in this Article includes contracting for the payment of fees toward, or furnishing of dental or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The term "hospital service corporation" as used in this Article is intended to mean any nonprofit corporation operating a hospital or medical or dental service plan, as defined in this section. Any corporation organized and subject to the provisions of this Article, the certificate of incorporation of which authorizes the operation of either a hospital or medical or dental service plan, or any or all of them, may, with the approval of the Commissioner, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical or dental service plan, or any or all of them.

1 The term "preferred provider" as used in this Article with respect to contracts, organizations,  
2 policies or otherwise means a health care service provider who has agreed to accept, from a  
3 corporation organized for the purposes authorized by this Article or other applicable law, special  
4 reimbursement terms in exchange for providing services to beneficiaries of a plan administered  
5 pursuant to this Article. ~~Except to the extent prohibited either by G.S. 58-65-140 or by rules~~  
6 ~~adopted by the Commissioner not inconsistent with this Article, the contractual terms and~~  
7 ~~conditions for special reimbursement shall be those which the corporation and preferred provider~~  
8 ~~find to be mutually agreeable.~~

9 The term "full service corporation" as used in this Article means any corporation organized  
10 under the provisions of this Article that offers a medical service plan or a hospital service plan.

11 The term "single service corporation" as used in this Article means any corporation organized  
12 under the provisions of this Article that offers only a dental service plan."

13 **SECTION 4.6.(d)** The Department may adopt temporary rules to implement the  
14 provisions of subsection (a) of this section.

### 15 16 **AMEND CONTINUING EDUCATION FOR BAIL BONDSMEN AND RUNNERS**

17 **SECTION 4.7.** G.S. 58-71-71(b) reads as rewritten:

18 "(b) Each year by June 30 every licensee shall complete at least three hours of continuing  
19 education as provided by an approved provider in subjects related to the duties and  
20 responsibilities of a runner or bail ~~bondsman before renewal of the license.~~ bondsman. This  
21 continuing education shall not include a written or oral examination. A person who receives his  
22 or her first license on or after January 1 of any year does not have to comply with this subsection  
23 until ~~the period between his first and second license renewals.~~ June 30 of the following year."

### 24 25 **NORTH CAROLINA MANUFACTURED HOUSING BOARD TECHNICAL CHANGE**

26 **SECTION 4.8.** G.S. 143-143.10(a) reads as rewritten:

27 "(a) There is created the North Carolina Manufactured Housing Board within the  
28 Department. The Board shall be composed of 11 members as follows:

- 29 (1) The Commissioner of Insurance or the Commissioner's designee.
- 30 (2) A manufactured home manufacturer.
- 31 (3) A manufactured home dealer.
- 32 (4) A representative of the banking and finance industry.
- 33 (5) A representative of the insurance industry.
- 34 (6) A manufactured home supplier.
- 35 (7) A set-up contractor.
- 36 (8) Two representatives of the general public.
- 37 (9) A person who is employed with a HUD-approved housing counseling agency  
38 in the State.
- 39 (10) An accountant.

40 The Commissioner or the Commissioner's designee shall chair the Board. The Governor shall  
41 appoint to the Board the manufactured home manufacturer and the manufactured home dealer.  
42 The General Assembly upon the recommendation of the Speaker of the House of Representatives  
43 in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and  
44 finance industry, the employee of a HUD-approved housing counseling agency, and the  
45 representative of the insurance industry. The General Assembly upon the recommendation of the  
46 President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board  
47 the manufactured home supplier, the accountant, and the set-up contractor. The Commissioner  
48 shall appoint two representatives of the general public. Except for the representatives from the  
49 general public and the persons appointed by the General Assembly, each member of the Board  
50 shall be appointed by the appropriate appointing authority from a list of nominees submitted to  
51 the appropriate appointing authority by the Board of Directors of the North Carolina

1 ~~Manufactured Housing Institute~~-Manufactured and Modular Homebuilders Association. At least  
2 three nominations shall be submitted for each position on the Board. The members of the Board  
3 shall be residents of the State.

4 The members of the Board shall serve for terms of three years. In the event of any vacancy  
5 of a position appointed by the Governor or Commissioner, the appropriate appointing authority  
6 shall appoint a replacement in the same manner as provided for the original appointment to serve  
7 the remainder of the unexpired term. Vacancies in appointments made by the General Assembly  
8 shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate  
9 appointing authority shall appoint a replacement to serve the remainder of the unexpired term.  
10 Such appointment shall be made in the same manner as provided for the original appointment.  
11 No member of the Board shall serve more than two consecutive, three-year terms.

12 The members of the Board designated in subdivisions (8), (9), and (10) of this subsection  
13 shall have no current or previous financial interest connected with the manufactured housing  
14 industry. No member of the Board shall participate in any proceeding before the Board involving  
15 that member's own business.

16 Each member of the Board, except the Commissioner and any other State employee, shall  
17 receive per diem and allowances as provided with respect to occupational licensing boards by  
18 G.S. 93B-5. Fees collected by the Board under this Article shall be credited to the Insurance  
19 Regulatory Fund created under G.S. 58-6-25."  
20

## 21 **AMEND AUTOMOBILE INSURANCE UNDERWRITING PROCEDURE**

22 **SECTION 4.9.(a)** G.S. 58-36-65(e) reads as rewritten:

23 "(e) Records of convictions for moving traffic violations to be considered under this  
24 section shall be obtained at least annually from the Division of Motor Vehicles and applied by  
25 the Bureau's member companies in accordance with rules to be established by the Bureau. Prior  
26 to the sale of a new policy of motor vehicle insurance, records of convictions for moving traffic  
27 violations shall be obtained in accordance with rules established by the Bureau. Such rules shall  
28 permit a reasonable period for underwriting review following the binding of coverage in the event  
29 access to such records of convictions are unavailable at the time of sale or the applicant has  
30 provided incorrect or incomplete data necessary to access such records of convictions."

31 **SECTION 4.9.(b)** This section becomes effective January 1, 2019, and applies to  
32 policies issued, renewed, or amended on or after that date.  
33

## 34 **ADD ADDITIONAL PROOFS OF RESIDENCY TO RATE EVASION STATUTE**

35 **SECTION 4.10.** G.S. 58-2-164(c2) reads as rewritten:

36 "(c2) To the extent relevant to a particular criterion for eligible risk status and for the  
37 purpose of obtaining other than nonfleet private passenger motor vehicle insurance, reliable proof  
38 of North Carolina residency or eligible risk status includes two or more of the following:

- 39 (1) A utility bill in the name of the applicant showing a North Carolina address  
40 for the principal place of business of the applicant.
- 41 (2) A receipt for real property taxes paid by the applicant to a North Carolina  
42 locality within the preceding 12-month period and showing the applicant's  
43 current North Carolina address.
- 44 (3) A valid North Carolina vehicle registration issued to the applicant and  
45 showing the applicant's current North Carolina address.
- 46 (4) A federal Income Tax Return filed by the applicant for the most recent prior  
47 filing period showing the applicant's name and current North Carolina  
48 address.
- 49 (5) The valid North Carolina driver's license of an owner of an applicant that is a  
50 corporation or an LLC, provided that the person holds at least twenty (20%)  
51 percent ownership interest in the applicant corporation or LLC.

(6) If the principal place of business of a corporation or LLC is the primary residence of the sole owner, any of the documents identified in subdivisions (1) through (5) of this subsection, whether in the name of the corporation or LLC or in the name of the sole owner. For purposes of this subsection, "sole owner" shall mean an individual or a husband and wife.

For purposes of subdivisions (5) and (6) of this subsection, on policies to be ceded to the North Carolina Reinsurance Facility, proof of ownership is established through the execution by the owner of the corporation or LLC, of a form promulgated by the North Carolina Reinsurance Facility. The execution of this form shall constitute a written statement in support of an application for insurance or amendment to a policy of auto insurance under subsections (b) and (b1) of this section."

### CLARIFY EXCEPTED BENEFITS REQUIREMENTS

**SECTION 4.11.** G.S. 58-68-25(b) reads as rewritten:

"(b) Excepted Benefits. – Excepted benefits are not subject to requirements under this Chapter regarding coverage of a specific person, provider, treatment, service, condition, or disease unless that coverage is expressly required by law. For the purposes of this Article, "excepted benefits" means benefits under one or more or any combination of the following:

- (1) Benefits not subject to requirements. –
  - a. Coverage only for accident or disability income insurance or any combination of these.
  - b. Coverage issued as a supplement to liability insurance.
  - c. Liability insurance, including general liability insurance and automobile liability insurance.
  - d. Workers' compensation or similar insurance.
  - e. Automobile medical payment insurance.
  - f. Credit-only insurance.
  - g. Coverage for on-site medical clinics.
  - h. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.
  - i. Short-term limited-duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations.

...."

### PART V. AMEND CAPTIVE INSURANCE LAWS AND MAKE CLARIFYING CHANGES

**SECTION 5.1.(a)** G.S. 58-10-345(g) reads as rewritten:

"(g) The Commissioner is authorized to retain legal, financial, and audit services from outside the Department, the costs of which shall be reimbursed by the business entity. G.S. 58-2-160 shall apply to ~~audits, investigations, audits~~ and processing conducted under the authority of this section."

**SECTION 5.1.(b)** G.S. 58-10-355 reads as rewritten:

#### "§ 58-10-355. Organizational audit.

In addition to the processing of the application, an organizational ~~investigation or~~ audit may be performed before an applicant business entity is licensed. Such investigation or audit shall consist of a general ~~survey~~ review of the applicant business entity's corporate records, including charters, bylaws, and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the Commissioner deems necessary."

**SECTION 5.1.(c)** G.S. 58-10-385(a) reads as rewritten:

1       "(a) Every captive insurance company shall report to the Commissioner within 30 days  
2 after any change in its executive officers or directors, including in its report a biographical  
3 affidavit for each new officer or director. The change shall be deemed approved unless it is  
4 disapproved within 30 days from the completion of the Commissioner's review of the  
5 biographical affidavit."

6  
7 **PART VI. AMEND BAIL BOND FORFEITURE LAW**

8       **SECTION 6.1.(a)** G.S. 15A-544.5(b)(7) reads as rewritten:

9       "(7) The defendant was incarcerated in a local, state, or federal detention center,  
10 jail, or prison located anywhere within the borders of the United States at the  
11 time of the failure to appear, or any time between the failure to appear and the  
12 final judgment date, and the district attorney for the county in which the  
13 charges are pending was notified of the defendant's incarceration while the  
14 defendant was still incarcerated and the defendant remains incarcerated for a  
15 period of 10 days following the district attorney's receipt of notice, as  
16 evidenced by a copy of the written notice served on the district attorney via  
17 hand delivery or certified mail and written documentation of date upon which  
18 the defendant was released from incarceration, if the defendant was released  
19 prior to the time the motion to set aside was filed."

20       **SECTION 6.1.(b)** This section becomes effective October 1, 2018, and applies to  
21 hearings held on or after that date.

22       **SECTION 7.** Except as otherwise provided, this act is effective when it becomes  
23 law.  
24